

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET August 6, 2010
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B9200193
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR SumTotal Systems 7965 N. High St., Ste. 300 Columbus, OH 43235 Email: jfrank@sumtotalsystems.com	TELEPHONE Jodi Frank (765) 244-9312
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Administrator: Patty Bogard DHS Learning Management System (LMS) Upgrade	
CONTRACT PERIOD: From: March 31, 2009 To: March 31, 2014	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE (S):

Effective immediately the vendor contact has been replaced by Jodi Frank. All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON(S):

Per vendor request and agency approval.

Total Estimated Contract Value Remains: \$576,199.87

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **May 24, 2010**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B9200193
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR SumTotal Systems 7965 N. High St., Ste. 300 Columbus, OH 43235 Email: <u>gzuder@sumtotalsystems.com</u>	TELEPHONE Gary Zuder (614) 781-9235
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Administrator: Patty Bogard DHS Learning Management System (LMS) Upgrade	
CONTRACT PERIOD: From: March 31, 2009 To: March 31, 2014	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE (S):

Effective immediately this contract is hereby **INCREASED** by \$11,973.00 for enhancements to the Learning Management System to promote efficiency and cost savings, as identified in the attached Statement of Work No. 2.

All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON(S):

Per agreement from agency and vendor.

INCREASE: \$11,973.00

Total Revised Estimated Contract Value: \$576,199.87

**STATEMENT OF WORK NO 2
Professional Services**

**(AMENDMENT TO MICHIGAN DEPARTMENT OF HUMAN SERVICES (MDHS) and MICHIGAN DEPARTMENT
OF MANAGEMENT AND BUDGET (MDMB), Contract# 071B9200193)**

This Statement of Work No. 2 ("SOW") is effective March 18 2010 and is by and between MDHS and MDMB or ("you") and SumTotal Systems, Inc. ("we" or "us").

1. This Statement of Work is subject to all the terms and conditions of the Master Solutions Agreement between MDHS and MDMB and SumTotal Systems, Inc. dated March 31, 2009 ("Agreement").
2. **The parties hereby agree to ADD new professional services as identified in this section 2:**

• **2.1 Project Management** – We will provide up to 8 hours of part-time project management throughout this consulting assignment.

Our Project Manager ("PM") will focus on management of SumTotal Systems-specific tasks and will provide guidance on your tasks that are a dependency for us.

2.2 Password Reset customization – We will provide Implementation Consulting to State Of Michigan technical support staff in setting up the LMS to meet the password complexity and expiration requirements. In addition:

- Create a routine to generate a temporary password
 - Add the button to LMS external main page saying "Forgot Password"
 - Change the student's password upon validation to a temporary password
 - Email the new temporary password to the students email on file in the LMS. No other information from the LMS other than the password should be included.
 - Force the student to change their password upon using it the first time.
 - If a separate login screen is required to force the password rules and change of a temporary password then create these pages, buttons, and navigation needed to get to it.

2.3 CUKA customization – We will provide a unique key change from the original Pathlore customization to identify new users from 10 days to a different amount of specified days from MDHS.

To assist you in budgeting for this Change Order, we are able to provide the following budgetary guidance:

Budgetary Guidance for SOW

3. Fixed Fees

The project items set forth in the table below will be invoiced as follows:

The fees associated with the following project items to be performed under this Statement of Work are fixed at the project items fees listed below ("Fixed Fee"). Actual travel expenses ARE included in the Fixed Fee and will NOT be invoiced separately as set forth in the Agreement.

Project Item/s	Fixed Fee	Billing Milestone
Project Management	\$1,915.68	Upon completion
Password Reset Customization	\$9,578.40	Upon installation in production
CUKA Customization	\$478.92	Upon installation in production environment.
Fixed Fee Total	\$11,973.00	

The figures presented above are fixed fees. Any other professional services work will be deemed separate work from this SOW and require approval and a new change order for the requested work. This estimate is valid for 30 days from the date of this document.

5. Travel. It is anticipated that there will be NO travel involved in the performance of this Statement of Work. Travel associated with the performance of these services will be limited as deemed necessary to the implementation of this project and NOT be billed to the customer. The travel policies set forth in the Statement of Work will apply.

6. Assumptions. The performance of this SOW involves activities to be performed by both parties. If during the performance of this SOW we do not receive your deliverables as scheduled, then our ability to complete this SOW in a timely manner will be jeopardized. We will notify you should this occur, and will notify you of the impact with regards to additional expenses and subsequent schedule changes as set forth in the Agreement.

7. Fees. The fees, if any, for the professional services are set forth in this SOW. We will invoice you as set forth in this Agreement. Each invoice will describe the professional services performed. All invoices to you for professional services will be sent to the following address:

Your Billing Information:

State of Michigan
Purchasing Operations
Attention: Steve Motz
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

This Statement of Work, the Agreement, amendments, and statements of work thereto, contain our entire agreement. The Statement of Work may not be modified except by written instrument signed by both parties and referring to the particular provisions to be modified.

Unless specifically changed or added herein, all other terms and conditions in the Statement of Work and Agreement will remain in full force and effect and can only be modified in writing and signed by both parties.

You accept this SOW and authorize us to commence the professional services as set forth in this SOW.

Michigan Department of Human Services or
Michigan Department of Management and
Budget

SUMTOTAL SYSTEMS, INC.

By: 
Authorized Signature

By: _____
Authorized Signature

Printed Name: STEVE MOTZ

Printed Name: _____

Title: BUYER, DTMB

Title: _____

Date: 5/24/2010

Date: _____

**STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933**

September 14, 2009

**CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B9200193
between
THE STATE OF MICHIGAN
and**

NAME & ADDRESS OF VENDOR SumTotal Systems 7965 N. High St., Ste. 300 Columbus, OH 43235 Email: gzuder@sumtotalsystems.com	TELEPHONE Gary Zuder (614) 781-9235
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Administrator: Patty Bogard DHS Learning Management System (LMS) Upgrade	
CONTRACT PERIOD: From: March 31, 2009 To: March 31, 2014	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE (S):

Effective immediately, Appendices D and E of the Agreement are hereby removed in their entirety and replaced with Appendices D and E attached to this Change Notice. These changes reflect the removal of the Pathlore Self Service software and associated maintenance, and the reallocation of funding for bank of hours provided in Table 9 of Exhibit E. All other terms, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per contractor request, and agency concurrence.

Estimated Contract Value Remains: \$564,226.87

Appendix D
Description of Solution and Customer Maintenance

As used herein, “we” or “us” shall mean SumTotal Systems, Inc. (successor-in-interest to Pathlore Software Corporation), a Delaware corporation (“we” or “us”) with an address for purposes of this Contract at 1808 North Shoreline Boulevard, Mountain View, CA 94043; and “you” shall mean Michigan Dept. of Human Services with an address for purposes of this Contract at 235 South Grand Ave., Lansing, MI 48933.

You previously licensed SumTotal’s Pathlore Registrar software pursuant to the agreement provided by us with such Registrar software (“Registrar Agreement”). You wish to upgrade from the Registrar software to SumTotal’s Pathlore LMS Enterprise software as set forth herein.

This Contract replaces and supersedes the Registrar Agreement. All Statements of Work and agreements executed by the parties pursuant to the Registrar Agreement shall remain in full force and effect and be governed by this Contract. In the event of any inconsistency between this Contract and the Registrar Agreement or any Statement of Work executed hereunder, the terms of this Contract shall control.

I. DESCRIPTION OF SOLUTION

We will provide you with the following solution pursuant to the Terms and Conditions of the Contract:

A. <u>Initial License Configuration</u>	
A.(1) <u>Software Components</u> :	<ul style="list-style-type: none">• SumTotal Pathlore LMS Enterprise 6.6• Phone Self Service
A.(2) Number of Named Users for the Pathlore LMS Enterprise Software:	9,000

B. <u>Software License Fees</u>:	
Pathlore LMS Enterprise Software License Fees	\$129,493 (includes a one-time product credit of \$19,650 for W1,100,623)
Total Software License Fees:	\$129,493

C. <u>Maintenance Services for Software</u>:	
Type of Maintenance Services:	Standard
Number of Designated Contacts:	4
Annual Fee for each additional Designated Contact above four (4)	\$1,500.00
Initial Maintenance Term:	Effective Date through one year from the Effective Date
Initial Maintenance Term Fee for the Pathlore LMS Enterprise Software:	\$25,905.60
Total Initial Maintenance Term Fee	\$25,905.60

<p><u>D. Billing Information:</u></p> <p>MICHIGAN DEPT OF INFORMATION TECHNOLOGY PROCUREMENT - 1ST FLOOR, NORTH TOWER CONSTITUTION HALL 525 W. ALLEGAN LANSING MI ZIP: 48913 Attn: SHARON CARTER Phone: 517 335-4038</p>	<p><u>Shipping Information:</u></p> <p>MDHS Office of Training and Staff Development 7109 West Saginaw Highway Lansing, MI 48917 Attn. Dawn Callahan Tel No. 517517-335-6234 e-mail: callahand@michigan.gov</p>
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Languages: The interface and data (excluding data entered by the Named User) presented to the Named User during operation of the Software under the Initial License Configuration is localized in U.S. English.

II. CUSTOMER MAINTENANCE

This Exhibit sets forth the additional terms and conditions under which we will provide customer maintenance services in connection with the Software licensed to you pursuant to this Contract.

Customer Maintenance Contact Information:

SumTotal Systems Maintenance Web Site: **www.sumtotalsystems.com/support** (Note: Follow the instructions for submitting a technical issue or question to SumTotal Systems.)

Telephone Maintenance Numbers: **877-TOTALCS or 877-868-2527 or 425-637-1673**

The contact information above is current as of the date of this Contract. We reserve the right to change our contact information from time to time upon notice to the Designated Contacts.

C1. Additional Definitions.

(a) “Designated Contacts” means the individuals designated by you and agreed to by us who are authorized to contact our customer maintenance staff and who will coordinate all of your Error submissions and maintenance requests.

(b) “Error” shall mean a reproducible defect in the Software when operated on a Supported Environment, which causes the Software not to operate substantially in accordance with our published documentation.

(c) “Error Correction” means a modification or patch that brings the Software into substantial conformance with our published documentation, or a procedure, routine or other information that enables you to avoid the practical adverse effect of an Error.

(d) “Instance” means one or more SumTotal web application servers.

(e) “Maintenance Release” means an update to an existing version of the Software containing Error Corrections or minor functionality enhancements. A Maintenance Release is designated as a numbered service pack for the current version, with no change in the version number.

(f) “New Version Release” means a new version of the Software containing new features or enhancements to functionality. A New Version Release is designated by an increase in the version number. e.g. from 2.5 to 2.6 or 3.0. “New Version Release” only includes releases of the Software in a language described above.

(g) “Primary Instance” means an Instance in your production environment containing your live training records.

(h) “Secondary Instance” means an Instance in your testing environment used for testing or staging of your data.

(i) “Supported Environment” means a hardware, operating system and database platform meeting the minimum system configuration requirements for the proper use and operation of the Software as set forth in our published documentation.

(j) “Maintenance Term” means any period during which you are entitled to receive maintenance hereunder, including any renewals or extensions thereof.

C2. Maintenance Services.

(a) Standard Maintenance Provided. During each Maintenance Term, we will provide the following maintenance, subject to the procedures and limitations described herein: (i) clarifying and assisting in the operation of the features and functions of the Software; (ii) clarifying our published documentation; (iii) assisting in identifying and verifying the causes of suspected Errors; and (iv) providing Error Corrections. Such maintenance will be provided for the Primary Instance and Secondary Instance. During each Maintenance Term, you will have access to our online Customer Productivity Center (“CPC”) located at www.sumtotalsystems.com. The CPC provides you with access to online learning, knowledge documentation, and tools that enable you to enhance your knowledge of the Software.

(b) Self Help Maintenance Resources. You agree that the users of the Software will first attempt to answer any questions or resolve any issues with respect to the operation of the Software by using the following self help resources: (i) the Help function of the Software and (ii) our customer maintenance web site.

(c) Contacting Customer Maintenance. If you are unable to resolve an issue or question with respect to the Software using the self help resources described above, the Designated Contacts may contact a customer maintenance representative to receive maintenance using one of the methods described below. We will provide maintenance only in English and only to the Designated Contacts. Any communication between the Designated Contacts and a customer maintenance representative must

be in English. We will not provide maintenance to end users of the Software or to any person other than the Designated Contacts.

(i) Telephone Hot Line. We will provide telephone maintenance to the Designated Contacts between the hours of 8:00 a.m. to 8:00 p.m. Eastern Time Monday through Friday, excluding SumTotal Systems holidays (the "Maintenance Hours"). We will provide you with a list of SumTotal Systems holidays and any reduced maintenance hours on those holidays upon request. If you have purchased optional Extended Maintenance, we will provide additional telephone maintenance outside the Maintenance Hours 24 hours per day during weekdays for all severity level Errors and 24 hours per day, seven days per week, including SumTotal Systems holidays ("Extended Maintenance Hours") for Severity 1 Errors, as set forth in Table C1.

○ (ii) Web Email Template. We will use commercially reasonable efforts to provide an acknowledgement to web email sent to "<http://www.sumtotalsystems.com/support>" within eight (8) business hours after we receive the email.

○ (d) Error Correction. When you report an Error to us you should include a detailed description of the Error and the severity level determined in accordance with Section C2(e) below. When we receive notice of an Error, we will assign a problem tracking number to be included in all correspondence between you and us related to the Error and after our e-mail acknowledgement described in Section C2(c)(ii) we will provide a response in accordance with the severity levels and response times identified in Section C2(e). Thereafter, we will use commercially reasonable efforts to provide an Error Correction. The Error Correction may require that you install the latest Maintenance Release for the supported version of the Software on which you reported the Error. An Error Correction may require multiple contacts and off-line research. The Error Correction, when completed, may be provided in the form of a Software patch consisting of sufficient programming and operating instructions to implement the Error Correction, which will be provided to you via email, download or other electronic means.

(e) Response Times. Our response to an Error depends on the severity of the Error and the level of maintenance purchased by you, as determined by Table C1. For each level of severity, our customer maintenance representatives will use commercially reasonable efforts to respond, during the Maintenance Hours, within the times set forth in Table C1. Response time is the time from our receipt of notice of the Error until we contact the Designated Contact reporting the Error to begin resolution efforts, not the time to deliver an Error Correction. We will respond to an Error which arises in the Primary Instance at all severity levels set forth in Table C1. If an Error arises in the Secondary Instance, we will only respond according to the Severity 3 level response time, as set forth in Table C1.

(f) Additional Services with Premier Maintenance for the Primary Instance and Secondary Instance. If you have purchased Premier Maintenance, we will provide you with the following additional services for the Primary Instance and Secondary Instance: (i) a technical account manager responsible for proactively managing your maintenance issues during the Maintenance Hours; (ii) an annual one-day visit by the technical account manager to your location on a mutually-agreed date (travel and expenses not included); (iii) monthly usage reports detailing maintenance activity; (iv) review of relevant error corrections delivered to our customer base; and (v) accelerated response times.

(g) Exclusions from Maintenance Program. We are not responsible or liable for causes external to the Software, including but not limited to: (i) your failure to incorporate Maintenance Releases or New Version Releases; (ii) installation of the Software or any New Version Releases not in accordance with the documentation provided with the Software or New Version Releases; (iii) your use of the Software with any software or hardware other than the Supported Environment; (iv) problems resulting from use of the Software in a manner not permitted pursuant to your license; (v) modifications, alterations, or additions to the Software by parties other than us (including without limitation, modifications, alterations, or additions to the Software made by you); or (vi) damage from any source other than us including but not limited to water, humidity, fire, power surges, computer viruses, and accidents ("Excluded Services"). Any maintenance or services required to fix the Excluded Services will be billed to you on a time-and-materials basis in accordance with our then current rates. Such services

shall be set forth on a mutually agreed upon Statement of Work and provided to you pursuant to this Contract. Unless we are hosting the Software at our data center, this maintenance program does not include maintenance in connection with or correcting Errors arising out of or related to a database management server or a web server or any other third party component that is used in conjunction with the Software. We may, but are not required to, provide Error Corrections for such Errors at our then current time and materials rates. Maintenance does not include Software installation, configuration or services provided on-site at your location. If we are required or requested to travel to your facilities, any services will be provided at then current time and materials rates and you will reimburse us for all reasonable travel expenses, including meals and lodging. Maintenance does not include problems or errors in modifications to the Software we provide as a Service Deliverables pursuant to this Contract. Service Deliverables are provided with a warranty as set forth in this Contract. We are not responsible for restoring lost data or damage to your data base that result from your actions. If you desire to purchase upgrade services or other professional services from us outside the scope of the maintenance in this Contract, then we will provide such professional services to you for a charge as set forth in a mutually agreed Statement of Work pursuant to this Contract.

C3. Your Responsibilities.

(a) Supported Environment and Operations. You are responsible for undertaking the proper supervision, control and management of your use of the Software including, but not limited to: (i) providing, maintaining and assuring proper configuration of the Supported Environment; (ii) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction; and (iii) maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs. This Section will not apply to you if we are hosting the Software at our data center.

(b) Assistance in Providing Maintenance. You will provide reasonable assistance to us in determining and resolving Errors you report. Error determination activities may include performing network traces, capturing error messages, collecting configuration information and other similar activities to allow us to reproduce the Error. Resolution activities may include access to your personnel and/or remote access to the Supported Environment. You agree to allow us to use remote access tools, with the participation and under the supervision of a Designated Contact, to access the Software in the Supported Environment and modify its configuration as part of our Error determination and resolution activities. We may not be able to provide you with an Error Correction without such remote access. You are responsible for performing activities to implement Error Corrections we provide and for responding in a timely manner to requests for information by our customer maintenance staff. Error Corrections may include changing, installing or reinstalling new or existing versions of web browser software or new components, or modifying processes. Any information you provide us in connection with the maintenance process that you designate as confidential will be used only to resolve reported Errors, will not be disclosed to anyone other than our personnel involved in resolving the Error. As part of our Error resolution process, information you provide to us may be made available to our employees in foreign countries, unless you notify us otherwise in writing when providing us with such information.

(c) Designation of Maintenance Contacts. You will designate up to the number of individuals specified in this Contract as the Designated Contacts for receiving maintenance hereunder and notify customer maintenance of the Designated Contacts. You may change the Designated Contacts by notifying customer maintenance, but may not have more than the number of Designated Contacts set forth above at any one time. Each Designated Contact may not be changed more than once in a 30-day period.

(d) Training. You are responsible for proper training of the Designated Contacts and all other appropriate personnel in the operation and use of the Software and the Supported Environment.

C4. New Releases of the Software.

(a) Maintenance Releases Provided with Maintenance Services. If and when available, we will provide to you any Maintenance Releases and New Version Releases that we make generally available to customers who have purchased maintenance during the Maintenance Term at no additional charge. Any Maintenance Release or New Version Releases are part of the Software and subject to the

terms and conditions of this Contract. The designation of a Software release as a Maintenance Release or a New Version Release will be made by us in our reasonable discretion.

(b) Maintenance of Prior Releases. We will provide maintenance as described herein for the most current Maintenance Releases made with respect to the current New Version Release and the last two New Version Releases immediately preceding that release.

(c) Installation and Configuration of New Releases. Maintenance does not include the installation or configuration of any Maintenance Releases or New Version Releases. Any services to be provided in connection with the installation or configuration of Maintenance Releases or New Version Releases will be provided for a mutually agreed fee as a Service Deliverables pursuant to this Contract. New Version Releases may have significant changes from current versions and it is strongly recommended that we provide the services to install New Version Releases to ensure our ability to continue to provide maintenance and Error Corrections. We will not correct Errors arising out of or related to installation or configuration of the Software or any New Version Releases by any party other than SumTotal Systems.

(d) Migration of Customizations and/or Modifications. If you have customized and/or modified Software, maintenance does not include migrating your customizations and/or modifications to any Maintenance Release or New Version Release, unless otherwise provided under the Statement of Work pursuant to which we provided such customizations and/or modifications. Any services to be provided in connection with the migration of customizations and/or modifications to Maintenance Releases or New Version Releases will be provided for a mutually agreed fee as a Service Deliverables pursuant to this Contract.

C5. Source Code Escrow.

(a) Source Code Option. We will maintain the source code of the supported versions of the Software (determined in accordance with Section C4(b)) in an escrow account with Iron Mountain ("Iron Mountain") having the release conditions described below (the "Escrow Account"). You may elect, at your expense, to be added as an additional beneficiary of the Escrow Account at any time during the Maintenance Term by providing us written notice of your election of this option. If you elect to be added as a beneficiary of the Escrow Account, you will be invoiced directly by Iron Mountain for the fees to add and maintain you as a beneficiary. We reserve the right to use a reputable third-party commercial escrow agent other than Iron Mountain, provided that the release conditions are as set forth in this Contract.

(b) Release Conditions. If you elect the source code escrow option, you will be permitted to access and use the source code to maintain the Software components and versions licensed by you if any one of the following events occurs and remains uncorrected for more than 30 days during a Maintenance Term: (i) we have been adjudged to be bankrupt by a court of competent jurisdiction and there has been an entry of an order for relief under Title 11 of the United States Code; (ii) we have made a general assignment for the benefit of creditors; (iii) a general receiver or trustee in bankruptcy has been appointed for our business or property; or (iv) we take action under any state insolvency or similar law for the purpose of our bankruptcy, reorganization, or liquidation.

(c) Right to Use Following Release. If the source code is released to you, you may only use the source code for the sole purpose of supporting and maintaining the Software licensed to you in accordance with this Contract. You are obligated to maintain the confidentiality of the released source code and any materials which may accompany it.

C6. Maintenance Fees.

Annual maintenance fees for any Maintenance Term are based on the then current Software you license and your then current number of licensed Named Users. You will be invoiced for the maintenance fees for the initial Maintenance Term upon execution of this Contract and, subject to Section C7, for any renewal Support Term upon expiration of the then current Maintenance Term. Fees for additional services not included in maintenance or expenses incurred will be invoiced monthly at the end of the month in which such services are provided or expenses incurred.

C7. Term, Renewal and Termination.

(a) Initial Maintenance Term and Renewal. The initial Maintenance Term shall begin on the Effective Date and shall run for an initial Maintenance Term as set forth at the beginning of this Contract. Upon expiration of the then current Maintenance Term, a new Maintenance Term shall automatically begin for a consecutive 12-month period; provided that (i) you have not given us written notice that you do not wish to extend the Maintenance Term for an additional 12 months at least 30 days prior to the end of the current term; (ii) you pay the then current maintenance fee for the additional 12-month Maintenance Term for the Standard Maintenance option and any optional services we are then providing; and (iii) we still offer maintenance for the Software. If you have purchased the Premier or Extended Maintenance option, then you will pay the prior 12-month Maintenance Term fee plus the Consumer Price Index. We will provide you with written notice of the upcoming expiration date, which shall include notice of any price increase for the upcoming Maintenance Term, if applicable. The failure to renew maintenance shall not affect your licenses to the Software.

(b) Termination of Maintenance. Either party may terminate the maintenance of the Software upon 30 days written notice to the other party of a material breach by the other party of its obligations set forth in this Contract, if the breach is not cured within that 30-day period. If we terminate maintenance as a result of your uncured breach, we will retain all maintenance fees paid. Material breach is a failure to pay. If you terminate maintenance as a result of our uncured breach, our sole and exclusive obligation will be to promptly refund that portion of the maintenance fee actually paid by you that is proportional to the percentage of the Maintenance Term remaining at the time termination is effective. The termination of maintenance shall not affect your licenses to the Software.

(c) Reinstatement of Maintenance Services. If you have terminated or elected not to renew maintenance, you can elect to reinstate maintenance if we still offer maintenance for the Software and if you pay a fee equal to (i) the maintenance fees for the period when you did not receive maintenance and (ii) the maintenance fee for the current Maintenance Term.

Table C1
Response Times

Severity Level	Severity Level Description	Response Time Targets		
		Standard	Extended	Premier
Severity 1	All or most of the Software is inaccessible or unresponsive, e.g. the system has crashed and will not recover.	Time to respond is 1 hour, during Support Hours.	Time to respond is 1 hour.	Time to respond is 1 hour, during Support Hours.
Severity 2	A major feature of the Software is not functional, resulting in a critical impact to a majority of the user community. There is not an available workaround.	Time to respond is 4 hours during Support Hours.	Time to respond is 4 hours during Support Hours.	Time to respond is 1 hour during Support Hours.
Severity 3	Incorrect behavior of the Software, cosmetic problem, any usage question, or functionality not available but there is either an available workaround or the impact has an effect on a minority of the user community.	Time to respond is 1 business day during Support Hours.	Time to respond is 1 business day during Extended Support Hours.	Time to respond is 1 hour during Support Hours.

Appendix E
Cost Tables

Table 1: Summary of the Project Cost

Project Cost(s)	Cost (\$)	Comments
Business Requirements Breakdown in Table 2	\$113,620	Project Management, Product Specialist and Project Consulting in the Statement of Work (Appendix A) will be considered to validate Business Requirements.
Recommended Equipment Breakdown in Table 3	<u>Not Included</u>	Please see Table 3 for more information.
Software (includes COTS and any third party software) Breakdown in Table 4	\$129,493	Please see Appendix D Description of Solution and Customer Maintenance.
Design, Development, Implementation (New Application or Customization of COTS Data conversion, data migration, interfaces/integration, testing) Breakdown in Table 5	\$66,240	The Implementation Consulting and Phone Self Services in the Statement of Work (Appendix A) will be considered to be for Design, Development, and Implementation.
Training and Documentation Breakdown in Table 6	\$51,520	Train the Trainer Consulting, Training Administration Fundamentals, System Management Training. Please see the Statement of Work (Appendix A) for more details.
Software Maintenance and Support (Base Years Costs Only) Breakdown in Table 7	\$140,672.19	This is for the base 5 years, not to include years 6 and 7.
Bank of Hours Breakdown in Table 8 .	\$131,437.00	Table 8 is provided for budgetary and planning purposes. The actual budgetary figure for services will vary based on the type of consulting and assistance you may require. For budgetary forecasting we'd recommend using a budget of approximately \$131,437.
Breakdown in Table 9	\$ 62,681.68	Table 9 consists of \$62,681.68 in funding for additional services to be provided and agreed upon via in Change Order #1.
Other Costs Provide all additional costs that are not identified in tables 1-9.	N/A	N/A
Total Project Cost	\$564,226.87	This figure does not include funding (\$131,437) for the bank of hours provided in Table 8. Funding for Table 8 has not been approved by the State Administrative Board at this time.

Table 2: Business Requirements

Category	Resources Required (Contractor to identify IT classification)	Total # of hours (Contractor to identify # of hours per resource)	Total cost (\$) (Contractor must transfer category totals to Table 1)	Comments (Contractor must provide a narrative to explain how they arrived at the costs identified)
Business Requirements <i>(facilitated sessions, validation and verification of requirements)</i>	Our Project Managers, Product Specialists will mainly be responsible for the sessions, and validation of business requirements.		\$113,620	Project Management, Product Specialist and Project Consulting in the Statement of Work (Appendix A) will be considered to validate Business Requirements. This roles are clearly defined in the SOW.
Total Cost			\$113,620	

Table 3: Recommended Equipment

The State is responsible for acquiring its own hardware. If The State requires hardware through this contract, a price will be obtained through the change control process.

Table 4: Breakdown of Software Licenses – including COTS and all Third Party Software Costs and Software Documentation

Software license(s)	Product Name and Version	QTY (Number of Licenses)	License Type (i.e.: Enterprise, server, or per user)	Total Cost (\$)	Comments (Description of licensing)
Software Deliverables					
Bidders to list all software that is required for the proposed solution	Pathlore LMS Enterprise 6.6	9,000	Per named user.	\$129,493	This includes a one-time discount of \$19,650 for the current Registrar product.
Documentation Deliverables					
Installation Procedure Documentation	N/A	N/A	N/A	N/A	User documentation included.
End User Manual (Electronic)	N/A	N/A	N/A	N/A	User documentation included.
Technical Manual (Electronic)	N/A	N/A	N/A	N/A	User documentation included.
Data Element Dictionary (Electronic)	N/A	N/A	N/A	N/A	User documentation included.

Other (List):	N/A	N/A	N/A	N/A	User documentation included.
Total Cost				\$129,493	

Table 5: New Application or Customization of COTS - Design, Development and Implementation Costs

Category	Resources Required (Contractor to identify IT classification)	Total # of hours (Contractor to identify # of hours per resource)	Total cost (\$) (Contractor must transfer category totals to Table 1)	Comments (Contractor must provide a narrative to explain how they arrived at the costs identified)
Design and Development of the Solution to Meet RFP Requirements	Implementation Consultants will primarily be responsible, along with our Project Managers.	304 hours: 254 of IC 50 of PM and IC combination.	\$66,240	The Implementation Consulting, Project Management and Phone Self Services in the Statement of Work (Attachment A) will be considered to be for Design, Development, and Implementation.
<u>Implementation Activities (see below):</u>				
Data Conversion			\$20,240	
Integration			\$31,280	
Testing			\$14,720	
Total Cost			\$66,240	

Table 6: Breakdown of Training and Documentation Cost

Training cost and Documentation	Cost (\$)	Comments
Train the Trainer Session(s)	\$12,880	This will be completed by a unique Product Specialist for the system.
Train the Trainer Documentation (25)	N/A	No documentation is provided for these types of sessions.
Technical Training Session(s)	\$19,320	Onsite Classroom Training.
Technical Training Documentation (5)	No Charge.	Manuals are included.
System Administration Training Session(s)	\$19,320	Onsite Classroom Training.
System Administration Training Documentation (10)	No Charge.	Manuals are included.
Other (List):	N/A	
Total Cost	\$51,520	Contractor will work with the State to adjust or customize this plan as needed/required.

Table 7: Software Maintenance and Support

Cost Categories	Maintenance Costs & Help Desk Support (8AM-5PM EST Mon-Friday)	Maintenance Costs & Help Desk Support (7AM-7PM EST Mon-Friday) (OPTIONAL)	Comments
Software Maintenance and Help Desk Support			The State requires the license cost to be a one time fee.
First Year	\$25,905.60	N/A	Standard Pathlore support hours are 8 AM to 8 PM EST.
Second Year	\$26,682.77		
Third Year	\$27,483.25		
Fourth Year	\$28,857.41		
Fifth Year	\$31,743.15		
Total Cost (Base Years)	\$140,672.19	N/A	
Sixth Year (Option Year)	\$34,917.47		Do not include the optional year costs in Table 1 (Summary Cost Table)
Seventh Year (Option Year)	\$38,409.22		
Total Cost (Option Years)	\$73,326.69		

Table 8: Additional Hours Added Using Table 8 Rates

Staffing Category	Firm Fixed Hourly Rate	Est. Hrs (5 year total)	Extended Price
Project Manager	\$239.46	200	\$47,892
Technical Lead	\$239.46	200	\$47,892
Product Specialist	\$356.53	100 (arbitrary number, may be negotiated)	\$35,653
Hours Estimated Cost		500	\$131,437

NARRATIVE:

Contractor can support additional services as long as the State is current in maintenance with the Contractor. The actual budgetary figure for services will vary based on the type of consulting and assistance the State requires. Rates above are fully loaded to include travel and expenses.

Table 9: Additional Services added via Change Order #1

Staffing Category	Firm Fixed Hourly Rate	Est. Hrs (5 year total)	Extended Price
Project Manager	\$239.46	TBD	TBD
Technical Lead	\$239.46	TBD	TBD
Product Specialist	\$356.53	TBD	TBD
Hours Estimated Cost		TBD	\$62,681.68

Notes:

1. Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. "Estimated Hours" and "Extended Price" are non-binding.
2. The State intends to establish funding for \$131,437.00 as stated in Table 8 above, over the five year life of the application for development. Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.
3. The Contractor will utilize the fully loaded hourly rates to arrive at a firm fixed price for responses to separate statements of work for additional training and enhancements.

STATEMENT OF WORK ONE

CHANGE ORDER NO. 1

(AMENDMENT TO MICHIGAN DEPARTMENT OF HUMAN SERVICES (MDHS) and MICHIGAN DEPARTMENT OF MANAGEMENT AND BUDGET (MDMB), Contract# 071B9200193)

This Change Order No. 1 ("Change Order") is effective September 10, 2009 and is by and between The State of Michigan - MDHS and MDMB or ("you") and SumTotal Systems, Inc. ("we" or "us").

1. This Change Order is subject to all the terms and conditions of the Statement of Work and the Contract No. 071B9200193 between the State of Michigan and SumTotal Systems, Inc. dated March 31, 2009 ("Agreement").

2. The parties hereby agree to revise the following portions of Statement of Work No. One as follows:

Tasks Removed :

2.4 Phone Self Service – We will NOT be installing phone self service, and removing this task from the original statement of work.

3. The parties hereby agree to ADD new professional services as identified in this section 3:

2.9 Additional Content Analysis – We will be adding content analysis and testing of 4 updated online courses to validate AICC/SCORM compliance and tracking within the new LMS. These courses will be developed from MDHS, and sent to SumTotal for analysis. SumTotal will provide updated analysis documents for this content to MDHS. This work will replace the phone self service originally in scope.

2.10 Project Management – We will provide up to 37 hours of part-time project management throughout this consulting assignment. Our Project Manager ("PM") will focus on management of SumTotal Systems-specific tasks and will provide guidance on your tasks that are a dependency for us.

2.11 Single Sign On customization – We will develop an LDAP or Active Directory Structure single sign on customization to work with the Pathlore and MDHS system for authentication into the Pathlore LMS.

2.12 Unique key customization – We will provide a unique key customization to employee number in a test and production environment for the unique key in the Pathlore LMS.

2.13 Product Specialist Coaching – We will provide up to 16 hours of product specialist coaching to assist in the unique key change, and any product related questions during the installation of these customizations.

2.14 Toolbook Training Class – We will provide a 3 day onsite Toolbook Training Class. This will include training for up to 6 people, and include 6 training manuals delivered as part of this task.

The project items set forth in the table below will be invoiced as follows:

The fees associated with the following project items to be performed under this Statement of Work are fixed at the project items fees listed below ("Fixed Fee"). Actual travel expenses ARE included in the Fixed Fee and will NOT be invoiced separately as set forth in the Agreement.

To assist you in budgeting for this Change Order, we are able to provide the following budgetary guidance:

Budgetary Guidance for Change Order

Additional Content Analysis/Phone Self Service
removal.

Project Task	Role	Fixed Fee	Billing Milestone
Tasks Removed from Scope or Modified:			
2.3 Phone Self Service Removal	PM/IC	(\$11,040.00)	Not Applicable
New Tasks Added :			
2.9 - Additional Content Analysis	IC	\$0.00	Not Applicable
2.10 - Project Management	PM	\$11,040.00	Upon Installation of SSO and Unique key Change in production environment
2.11 - Single Sign On customization	IC	\$19,157.00	Upon Installation in a test Environment
2.12 - Unique key customization	IC	\$9,600.00	Upon Installation in a test Environment
2.13 - Product Specialist Coaching	IC	\$14,576.68	Upon Installation of SSO and Unique key Change in production environment
2.14 - Toolbook Training Class	TR	\$19,348.00	Upon Completion
Estimated Total Change to Statement of Work		\$62,681.68	

This Change Order will represent a net increase to the Budgetary Guidance set forth in the Statement of Work as follows:

Original Budgetary Guidance	Change Order	Increase (Decrease)	New Budgetary Guidance
\$231,380.00	Change Order No 1	\$62,681.68	\$294,061.68

The figures presented above are fixed fees. Any other professional services work will be deemed separate work from this change order and require approval and a new change order for the requested work. This estimate is valid for 30 days from the date of this document.

5. Travel. It is anticipated that there will be travel involved in the performance of this Statement of Work. Travel associated with the performance of these services will be limited as deemed necessary to the implementation of this project and NOT be billed to the customer. The travel policies set forth in the Statement of Work will apply.

6. Assumptions. The performance of this Change Order involves activities to be performed by both parties. If during the performance of this Change Order we do not receive your deliverables as scheduled, then our ability to complete this Change Order in a timely manner will be jeopardized. We will notify you should this occur, and will notify you of the impact with regards to additional expenses and subsequent schedule changes as set forth in the Agreement.

7. Fees. The fees, if any, for the professional services are set forth in this Change Order. We will invoice you as set forth in this Agreement. Each invoice will describe the professional services performed. All invoices to you for professional services will be sent to the following address:

Your Billing Information:

State of Michigan
Purchasing Operations
Attention: Steve Motz
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

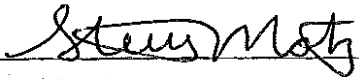
This Change Order, the Statement of Work, the Agreement, amendments, and statements of work thereto, contain our entire agreement. The Statement of Work may not be modified except by written instrument signed by both parties and referring to the particular provisions to be modified.

Unless specifically changed or added herein, all other terms and conditions in the Statement of Work and Agreement will remain in full force and effect and can only be modified in writing and signed by both parties.

You accept this Change Order and authorize us to commence the professional services as set forth in this Change Order.

Michigan Department of Human Services or
Michigan Department of Management and
Budget

SUMTOTAL SYSTEMS, INC.

By: 
Authorized Signature

By: 
Authorized Signature

Printed Name: STEVEN MOTZ

Printed Name: Hon Chen
Revenue Controller

Title: DMB-BUYER

Title: _____

Date: 9/14/2009

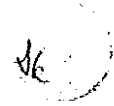
Date: 9/10/2009

Approved
SumTotal
Legal


9/10/09

Approved
SumTotal
Finance


9/10/09



**STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933**

May 5, 2009

**NOTICE
OF
CONTRACT NO. 071B9200193
between
THE STATE OF MICHIGAN
and**

NAME & ADDRESS OF VENDOR SumTotal Systems 7965 N. High St., Ste. 300 Columbus, OH 43235 Email: gzuder@sumtotalsystems.com		TELEPHONE Gary Zuder (614) 781-9235 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 Steve Motz
Contract Administrator: Patty Bogard DHS Learning Management System (LMS) Upgrade		
CONTRACT PERIOD: From: March 31, 2009 To: March 31, 2014		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION:		

Estimated Contract Value: \$564,227.86

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B9200193
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR SumTotal Systems, Inc. 1808 N. Shoreline Blvd. Mountain View, CA 94043 Email: gzuder@sumtotalsystems.com		TELEPHONE Gary Zuder (614) 781-9235 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 Steve Motz
Contract Administrator: Patty Bogard DHS Learning Management System (LMS) Upgrade		
CONTRACT PERIOD: From: March 31, 2009 To: March 31, 2014		
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>	
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>		
MISCELLANEOUS INFORMATION: Estimated Contract Value: \$564,227.86		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I9200052. Orders for delivery may be issued directly by the State Departments through the issuance of a Purchase Order Form.

FOR THE VENDOR:	FOR THE STATE:
SumTotal Systems, Inc.	
Firm Name	Signature
Authorized Agent Signature	Name
Authorized Agent (Print or Type)	Title
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. **071B9200193**
Learning Management System (LMS) Upgrade

Buyer Name: Steve Motz
Telephone Number: 517-241-3215
E-Mail Address: motzs@michigan.gov



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Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.112
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Contract	This Contract No. 071B9200193 including Appendices A-E attached hereto.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DMB	Michigan Department of Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Deleted – Not Applicable	Section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.



Reuse	Using a product or component of municipal solid waste in its original form more than once.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the Services required by this Contract.



Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 Project Request

The State of Michigan (State), through the Michigan Department of Management & Budget (MDMB), and Michigan Department of Human Services (MDHS), with assistance of the Michigan Department of Information Technology (MDIT), has entered into this contract with SumTotal Systems, Inc. (Contractor) for software and services to provide an upgraded and enhanced Learning Management System (LMS).

This project will include the procurement and implementation of Pathlore LMS Enterprise Edition, version 6.6, with automated Phone Self Service, data migration, interfaces to existing systems, installation and implementation of the software, and also five years of maintenance with a State option for two additional years.

1.002 Background

As the State of Michigan has experienced a decrease in the tax base and a decrease in federal dollars, the State has been exploring alternative methods of communicating information to meet the needs of the public and employees. The Michigan Department of Human Services (MDHS) continues to seek out cost-saving measures in all areas of operation, including travel. Research began in 2002 looking for various methods of delivering federal and state-mandated training to MDHS employees across 83 counties.

The Michigan Department of Human Services assists children, families, and vulnerable adults to be safe, stable and self-supporting.

MDHS has been using Pathlore's Registrar Classroom (Registrar) software for the past 10 years to track classroom-led training by MDHS trainers. The current product does not allow MDHS to deliver courses online, manage and track virtual classroom events, create and deliver training evaluation/assessments or provide online access for all MDHS employees. The current system does not allow private agency partners access to training events and history. Additionally, the current system is out of date and no longer supported.

MDHS wishes to expand its use of an LMS to encompass all expanded needs and to allow each employee web access to it. The needs MDHS have are to deliver courses online, manage and track virtual classroom events, create and deliver training evaluation/assessments, and provide online access for all MDHS employees. All employees need to be able to register themselves for classes, with management approval. An additional, automated telephone self-service component is required to register non-MDHS partners that need the training. An additional Registrar training database used within MDHS will be merged with the new system.

1.100 Scope of Work and Deliverables

1.101 In Scope

Contractor will provide an LMS to the State for its business operations for the MDHS. This project consists of the following components and services:

- Verification and validation of business requirements as notated in 1.104
- Recommended Equipment
- Procurement and installation of software
- Design, Development and Implementation of the software, including
 - o Configuration/Customization
 - o Data conversion



- o Integration, and
- o Testing
- Training and Documentation
 - o Train the trainer
 - o Technical
 - o Systems Administration
- Post Implementation/Project Services

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

1.102 Out Of Scope

The following are out of the scope of this Contract:

- Operations services, such as Systems management, Disaster recovery, Security administration services, and Storage services
- Procurement of the following 3rd Party software tools; Crystal Report development software to create Crystal reports, server OS software, Database (i.e., Oracle) software, and any other software required by the State of Michigan.
- This Contract does not include the development of custom software, therefore any professional services not tied to implementation and related work to SumTotal's proprietary software is therefore out of scope.

1.103 Environment

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. SumTotal will provide MDHS with the system requirements documentation for the Pathlore 6.6 LMS and will also coordinate with MDHS to request any exception to State IT policies and standards in accordance with MDIT processes. It will be the responsibility of the State to deny the exception request or to seek a policy or standards exception. Modifications to the Pathlore 6.6 LMS to conform to state hardware, software, and/or networking policies not currently specified in this Contract are out of scope.

SumTotal will coordinate with MDHS to validate the Pathlore LMS 6.6 software (including Phone Self Service) provided by SumTotal. In the case of any gaps identified during the planning phase, SumTotal will coordinate with MDHS to obtain waivers as stated above. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDIT. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The State's Project Manager and MDIT must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. Any changes must be approved, in writing, by the State's Project Manager and MDIT, before work may proceed based on the changed environment.

Enterprise IT Security Policy and Procedures:

The State's security environment includes:

MDIT provided SQL security database.

Secured Socket Layers.

SecureID (State Security Standard for external network access and high risk Web systems)



Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and MDIT's Office of Enterprise Security.

The State Unified Information Technology Environment (SUITE) – which includes standards for project management, systems engineering methodology, and associated forms and templates:

<http://www.michigan.gov/suite>

SUITE does not describe any of requirements or functionality of the software, and represents a methodology for performing the professional services.

Agency Specific Technical Environment

The Agency's current technical environment, as it relates to the services being requested, includes:

Hardware: Dell Power Edge Servers

Operating Systems: Windows

o Desktop – Microsoft XP

Desktop Workstations: Dell Pentium 4 and newer

Database: Oracle 10g

Network: Microsoft

Capacity Projections: 10,000 users

Browser: Internet Explorer 6.0

Reporting tools: Crystal Reports

Email and Calendar – Novell GroupWise (will be migrating to Microsoft Outlook)

Contractor has provided a description of the infrastructure requirements as **Appendix C** for the software and equipment proposed. For example, the database, operating systems (including versions), and hardware required for maximum effectiveness of the software. This includes the suggested architecture, technology standards, and programming environment. The State does not anticipate procuring hardware through this contract.

1.104 Work And Deliverables

This section includes

I. Services (work) To Be Provided and Deliverables and

II. Requirements (functional and technical) for the successful completion of this project.

The Contractor shall provide deliverables, services and staff to provide the functionality described herein, in accordance with the requirements as set forth below and in Appendices A and B. **Contractor will coordinate with the State to determine how to manage and provide documents required as part of SUITE methodology and/or if the Contractor's documentation will be used** (See Section 1.103, Environment).

I. Services (work) To Be Provided and Deliverables

The system shall be installed and in operation by a date to be mutually agreed upon by the State and SumTotal Systems. In addition to the services identified below, the Contractor has provided a Statement of Work (Appendix A) that includes additional tasks performed and service related items that will be created during this project. This document will be finalized during the initiation and planning stage.

A. Business Requirements – Contractor will verify and validate the following:

Deliverables:

1. Verification and validation of business requirements documentation
 - o Contractor will work with State staff in determining changes needed to be made to the LMS as part of the upgrade/implementation of Pathlore 6.6.
 - o Contractor will document all changes to be made to the LMS.



- o Contractor will provide analysis of integrating with multiple Online Learning courses (such as: Blackboard, Quick Knowledge and etc.). Modifications to the Pathlore 6.6 LMS to support these integrations are out of scope.

B. Equipment

Contractor has identified the system requirements for the implementation of the Pathlore LMS 6.6 (provided as **Appendix C**) to meet the requirements of this Contract. The State does not anticipate procuring hardware through this contract other than as set forth in this Contract and pricing for hardware is not included in the pricing table.

Deliverable(s)

1. **Equipment (Optional)** – The State reserves the right to purchase the recommended equipment through other State contracts at the State's sole discretion.

C. Software Procurement, Installation, and Documentation

Contractor will provide and install, at location(s) identified by the State, the LMS software.

Deliverables

1. Procurement of LMS software for State use
2. Installation of software purchased.
3. Installation Procedure Documentation
4. Administrator Manuals (Electronic)
5. Technical Manual (Electronic)
6. Data Element Dictionary (Electronic)

D. Design, Development and Implementation

Contractor will provide all necessary services to fully design, develop and implement the software for State use as activities described below.

a. Design and Development of the Solution

Contractor has indicated that no modifications are required to the LMS to meet the requirements as specified in Appendix B of this Contract and its appendices. As such, The State and Contractor understand that the requirements in Appendix B are subject to change based on mutual agreement between the State and Contractor resulting from the Business Requirements Validation sessions. Contractor will provide the services listed in the detailed statement of work contained in Appendix A.

Implementation Activities

b. Data conversion

Contractor is required to make the following data file conversions:

System Title: Registrar (Pathlore LMS 4.3.2)

Description: Conversion would consist of mapping fields from Registrar to the new LMS and copying over all data, current and historical to the new system.

There is currently over 100 required fields. See Appendix B sections 2, 3, 4 for more detail of the required fields needing to be converted.

Currently Registrar is an Oracle 9i database of over 800 megabytes in size. With an additional 300 mb of log files. The table space is currently defined at 1.2 GB. Please note: the State may upgrade the database to 10g before any work contained in this Contract is started.

c. Integration

Integrate the LMS to run as part of the DHSnet.

The Pathlore 6.6 LMS conforms to content that is AICC and/or SCORM 1.2 conformant.

The LMS will launch and track content that performs to either standard.



Integrate software to launch and track courses created and managed by tools like Blackboard. Integration with Blackboard will be solely dependent on the core product content integration capabilities of the Pathlore 6.6 LMS.

Integrate software to launch and track courses provided by Quick Knowledge. Integration with Quick Knowledge will be solely dependent on the core product content integration capabilities of the Pathlore 6.6 LMS.

d. Testing

Contractor will provide a detailed plan for Interface Testing, User Testing, Quality Assurance, Performance, and Operations Testing.

Contractor to use a test database environment to do all testing. This environment is to be transferred to State support staff for the continued use.

Testing scripts

- The LMS must be installed, tested, and data conversions completed, all successfully by SumTotal. MDHS/MDIT will be responsible for testing/validation with SumTotal's assistance in a team approach. SumTotal will work with the State throughout the implementation and testing process to identify potential issues and risks as early as possible in the project.

Deliverable(s)

Deliverables are the corresponding templates and report documentation.

E. Training and Documentation

Overview

Contractor shall provide training and documentation on the system for MDHS and identified State staff.

Contractor shall provide standard product documentation that results from upgrades and new versions to the system at no additional charge during the term of the Contract.

The State may request additional optional training sessions using the bank of hours provided in **Appendix E**, that may result from upgrades and new versions to the system that affect end-user functionality.

1. All documentation may be available in electronic format, published to an intranet website, accessible to State users.
2. To the extent Vendor is aware, the Vendor must use commercially reasonable efforts to notify the State of any discrepancies or errors outlined in the system, user, technical and operations documentation.

	Training Deliverable	Document Deliverable
1	Contractor will provide: Train the Trainer Training sessions in Lansing, MI for up to (25) State of Michigan Trainers.	No documentation is provided for these types of sessions.



2	Contractor will provide: Technical Training for up to (5) State of Michigan Trainers who will be working with the Contractor to configure the application, including establishing databases and interfaces, data conversion, customization, and upgrading the software	Contractor will provide <u>technical training documentation</u> for up to (5) State of Michigan trainers. In addition, Contractor must provide all documentation electronically.
3	Contractor will provide: System Administration Training for up to (10) State personnel who will be responsible for ongoing administration of the system, including security.	Contractor will provide any additional training materials for up to (10) State personnel that is not included in previous documentation. In addition, Contractor must provide this documentation electronically or in paper format.

H. Software Maintenance and Support

Contractor will provide Software Maintenance and Support and Help Desk Support as defined in **Appendix D**. The maintenance and support will available for at least five years, followed by additional optional years as the parties may agree.

Deliverables

1. Software Maintenance Agreement
2. Help Desk Support

I. Optional Bank of Hours

The State intends to establish funding for up to **500 hours** over the five year life of the application for development. Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.

The State will submit a Statement of Work to the Contractor for the additional training and enhancements requested and the Contractor will provide a written price proposal. Upon review and approval by the MDIT Project Manager, a Purchase Order release will be issued to the Contractor for the project to begin.

II. Requirements

Appendix A - Statement of Work – The Statement of Work is listed in **Appendix A**.

Appendix B – Functional and Technical Requirements – Functional and Technical requirements for the application are found in **Appendix B**.

1.200 Roles and Responsibilities

1.201 Contractor Staff, Roles, And Responsibilities

A. Contractor Staff

The Contractor has identified the following staff to perform the assigned work. The contractor will inform the State if a change in staff is required pending final contract negotiations and finalization of the LMS contract.

The Contractor will provide, and will update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.



The Contractor will identify a Single Point of Contact (SPOC). SumTotal's Project Manager (PM) will function as the SPOC. The duties of the **SPOC** shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC as set forth in Article II of the Contract.

All Key Personnel may be subject to the State's interview and approval process as set forth in Article II of the Contract. Any key staff substitution must have the prior approval of the State as set forth in Article II of the Contract.

1. Project Manager –Mike Hitchcock
2. Implementation Consultant – Tonzie Collins
3. Product Specialist –Tom Dunaway

The Contractor will provide a project manager to work closely with the designated personnel from the State to insure a smooth transition to the new system. The project manager will coordinate all of the activities of the Contractor personnel assigned to the project and create associated implementation/upgrade reports required by State. The Contractor's project manager responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare and/or coordinate project documents and materials
- Manage and report on the project's budget

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

B. On Site Work Requirements

1. Location of Work

On site work is to be performed, completed, and managed at the following locations. Contractor will provide additional services/work remotely at SumTotal offices and/or home offices.

MDHS, Office of Training and Staff Development
7109 W. Saginaw Highway,
Lansing, MI 48917

Grand Tower 13th Floor
235 South Grand Ave.
Lansing MI 48933



2. Hours of Operation:

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

1.202 State Staff, Roles, And Responsibilities

The State will provide the following resources for the Contractor's use on this project when performing on site services:

- Work space
- Minimal clerical support
- Desk
- Telephone
- PC workstation
- Printer
- Access to copiers and fax machine

The State project team will consist of Executive Subject Matter Experts (SME's), project support, and a MDIT and Agency project manager.

Executive Subject Matter Experts

The Executive Subject Matter Experts representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. The Executive SME's will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor's project manager, within 48-hours of their expected decision date.

Name	Agency/Division	Title
Dawn Callahan	MDHS Office of Training and Staff Development	Director

State Project Manager- (MDIT and Agency)

MDIT will provide a Project Manager. MDIT will be responsible for the State's infrastructure and work together with the Contractor in determining the system configuration.

The State's Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors



Facilitate communication between different State departments/divisions
 Acknowledge delivery and sign off of deliverable/milestone
 Review and sign-off of timesheets and invoices
 Resolve project issues
 Escalate outstanding/high priority issues
 Utilize change control procedures
 Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
 Document and archive all important project decisions
 Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
David Swenson	MDIT/Agency Services	MDIT Project Manager
Dawn Callahan	MDHS Office of Training and Staff development	MDHS Business Lead

MDIT shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.

Name	Agency/Division	Title
Patty Bogard	MDIT/Bureau of Strategic Policy	Contract Administrator

1.300 Project Plan

1.301 Project Plan Management

A. Initial Project Plan - Contractor will provide an Initial Project Plan with within 10 business days of finalizing the agreement which will include necessary estimated time frames and deliverables for the various stages of the project tasks/resource assignments, and the overall estimated project timeline.

1. In particular, the Preliminary Project Plan will include a MS Project plan or equivalent, approved by MDIT/MDHS, which shall include:
 - a. A list of the tasks necessary to meet the contracted deliverables.
 - b. Target dates and critical paths for the deliverables.
 - c. Identification of roles and responsibilities, including the organization/team responsible. Contractor is to provide a roles and responsibility matrix (this may be provided separately from the project plan).
 - d. Task milestones
 - e. Task durations and dependencies.
2. The Statement of Work included in Appendix A shall include the following deliverable/milestones for which payment shall be made.
 - a. Payment to the Contractor will be made upon the completion of the deliverable or milestone, not to exceed contractual costs of the phase. A milestone is defined as complete when all of the deliverables within the milestone have been completed.

B. Orientation Meeting

1. Upon fifteen (15) business days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract.
2. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor.
3. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

C. Performance Review Meetings



1. The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract.
2. The meetings will primarily be held virtually (via teleconference). On site meetings in Lansing, Michigan will only be required as mutually agreed by the State and the Contractor.
3. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

D. Project Control

1. The Contractor will carry out this project under the direction and control of MDIT and MDHS.
2. Within ten (10) business days of the award of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan.
 - a. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following. The project plan may be supplemented by additional documentation to meet the below requirements.
 - i. The Contractor's project organizational structure.
 - ii. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances will only be made when mitigating circumstances warrant the change and will be coordinated with the State.
 - iii. The project breakdown (work plan) showing sub-projects, activities and tasks, and resources required and allocated to each.
 - iv. The time-phased plan in the form of a graphic display (for example a Gaant Chart), showing each event, task, and decision point in the work plan.
 - v. Upon approval of the Project Plan by the State, it will be accepted by both parties and used to manage the overall project timeline and deliverables. The State shall use the Project Plan in its determination of the performance of the Contractor as well as the performance of their own internal team members.
 - b. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
 - i. Staffing tables with names of personnel assigned to Contract tasks.
 - ii. Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next thirty (30) calendar days, updated semi-monthly).
 - iii. Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - c. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

1.302 Reports

Reporting formats must be submitted to the State's Project Manager for approval within 20 business days after the execution of the contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

Contractor must provide at a minimum the following reports:

- o Weekly Project Status
- o Updated Project Plan
- o Summary of activity during the report period
- o Accomplishments during the report period
- o Deliverable Status
- o Schedule Status
- o Action Item Status
- o Risks and/or Issues



- o Change Control

1.400 Project Management

1.401 Issue Management

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

- Level 1 – Business leads
- Level 2 – Project Managers
- Level 3 – Executive Subject Matter Experts (SME's)

1.402 Risk Management

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor and the State are responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks assigned to the Contractor will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.



1.403 Change Management

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services. All Contract Change Notices must be mutually agreed and executed by both parties to be effective.**

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

1.500 Acceptance

1.501 Criteria

All Deliverables (not including initial software) shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the mutually agreed project plan and any other applicable terms and conditions of this Contract.

The acceptance process of this Contract, as outlined in the Terms and Conditions, Section 2.250, will be used by the State and the Contractor.

1.502 Final Acceptance

The process for final project completion is outlined in the Terms and Conditions, Section 2.250, and will be used by the State and the Contractor.

1.600 Compensation and Payment

1.601 Compensation And Payment

Method of Payment

The project will be paid as fixed price, deliverables based contract.

A detailed breakdown of pricing has been provided in the Statement of Work included in **Appendix A**.

Appendix E includes the summary cost tables for the entire contract and options.

Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

As part of preparing the cost tables, Contractor must identify all information related, directly or indirectly, to the Contractor's proposed charges for services and deliverables including, but not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.



If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's MDIT Contract Administrator with the reduced prices within fifteen (15) Business Days.

Invoicing and Payment

Contractor will submit properly itemized invoices to MDIT – Procurement to the "Bill To" Address on Purchase Order.

Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/equipment, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discounts.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

Statements of Work and Issuance of Purchase Orders

Unless otherwise agreed by the parties, each Statement of Work will include:

1. Background
2. Project Objective
3. Scope of Work
4. Deliverables and Milestone Completion
5. Project Control and Reports
7. Specific Department Standards
8. Payment Schedule
9. Travel and Expenses
10. Project Contacts
11. Agency Responsibilities and Assumptions
12. Location of Where the Work is to be performed
13. Expected Contractor Work Hours and Conditions

The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

1.602 Holdback

The State shall have the right to hold back an amount equal to ten percent (10 %) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back shall be released to Contractor 90 days after completion of the deploy phase



Article 2, Terms and Conditions

Definitions.

- a. "Deliverables" means the items to be delivered to the State in connection with the professional services the Contract perform as set forth in an applicable Statement of Work, such as consulting reports, on-site training, Software integration work or Software modifications, but does not include the Software licensed hereunder.
- b. "Named User" means any individual for whom there is a user login account permitting such individual to access and use a component of the Software.
- c. "Services" means the professional services Contractor provides to the State as set forth in an applicable Statement of Work. Services shall not include the Software, support and maintenance services, or hosting services.
- d. "Software" means those components of Contractor's proprietary SumTotal software in the languages licensed by the State hereunder as set forth in Appendix D, including Maintenance Releases or New Version Releases, provided pursuant to Appendix D or separately purchased by the State. "Software" does not include any hardware provided to the State hereunder.
- e. "State Material" means any data or materials, not provided by us or our suppliers, that are used in connection with the Software or Deliverables, such as technical information and functional specifications, user data, logos, photographs, compilations of facts, artwork, animations, video or audio files, or source materials for any of the foregoing.
- f. "Statement of Work" means a statement of work for each Services project Contractor undertakes, setting forth the agreed upon the scope of the Statement of Work, Deliverables, pricing and payment terms and, if applicable, project schedule, Deliverables, and estimated delivery dates.

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of 5 years beginning (**March 31, 2009**) through (**March 31, 2014**). All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued. From: March 31, 2009 To: March 31, 2014

2.002 Options to Renew

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 1 additional 2 year periods.

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.



Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default



If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the provisions on limitation of liability, warranty disclaimer, ownership, and the parties' respective indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations, the Department of Information Technology and The Department of Human Services (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Purchasing Operations Contract Administrator for this Contract is:

Steve Motz, Buyer
Department of Management and Budget, Purchasing Operations
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
motzs@michigan.gov
Phone: 517-241-3215

2.022 Contract Compliance Inspector

The Director of Purchasing Operations directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. **Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract. Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contract Compliance Inspector for this Contract is:

Patty Bogard, Contract Administrator
Department of Information Technology/Office of Employee and Financial Services/EPMO/Contract Office
BogardP@michigan.gov
Phone: (517) 335-4051

2.023 Project Manager

The following individual will oversee the project:

David Swenson
MDIT/Agency Services
235 South Grand Avenue
Lansing, MI 48933
SwensonD@Michigan.gov
517-335-6003

2.024 Change Requests



The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the Services/Deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

(1) Change Request at State Request

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(2) Contractor Recommendation for Change Requests:

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates provided in this Contract shall apply to the provision of such Services.

(4) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(5) No proposed Change must be performed until the proposed Change has been specified in a Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations and executed by both parties.

(6) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the



Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan
Purchasing Operations
Attention: Steve Motz
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:

Name: **SumTotal Systems, Inc.,
Columbus, OH**

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed



assignments or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 60 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

Notwithstanding the foregoing, Contractor may transfer and/or assign some or all of this Contract by operation of law due to a merger or change of control, upon written notice to the State. For the purposes of this Contract, "change of control" means consolidation, or any sale of all or substantially all of its assets or any other transaction in which more than 50% of its voting securities are transferred. Any assignment in violation of this Section shall be null and void.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 Freedom of Information



All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments. If the Statement of Work is to be paid on a time and materials basis, the Statement of Work shall set forth the hourly rate and the estimated number of hours Contractor reasonably believes will be required to complete the project.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in the applicable Statement of Work.

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.602**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.



- (e) Contractor will invoice the State for all Software License Fees set forth in Appendix D upon execution of this Contract. Invoicing for the initial Statement of Work is set forth in Appendix A. All amounts invoiced shall be due on net 45-day terms from invoice date.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance of payment to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the



company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a) (2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under this Contract must be employees or subcontractors of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Contractor shall not be responsible for any delays or costs associated with such approval process, and shall be subject to the reasonable availability of all such personnel.
- (d) Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs, and Contractor may provide 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request



The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties. Notwithstanding the foregoing, Contractor shall not be responsible for any delays or costs associated with any such replacements or removal requests.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

The Contractor will provide the Services/Deliverables directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.068 Contractor Return of State Equipment/Resources



The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. A list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract is attached.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, and 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.



2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate, at the State's cost and expense, the Contractor's personnel who will be performing Services at the State's facilities before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

While onsite at the State's facilities, all Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected that the State will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any unauthorized use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI DATA Security Requirements

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in



completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.

The Contractor will contact the Department of Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.

Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor will continue to treat cardholder data as confidential upon contract termination.

If PCI Data is to be provided to Contractor hereunder, upon the States written request, the Contractor will provide the Department of Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor will advise the Department of Management and Budget, Financial Services of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor will provide a time line for corrective action.

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean (i) all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below), which is marked confidential, restricted, proprietary, or with a similar designation, or is identified as confidential at the time of disclosure; and (ii) proprietary technology or computer software in all versions and forms of expression, including the Software and Deliverables provided hereunder. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's



obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, each party must destroy the other party's Confidential Information in its possession or control, and upon the disclosing party's written request, must certify to the other party that the disclosing party has destroyed all the other party's Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions in this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable assistance for the State's representatives to review the Deliverables as set forth herein.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

**2.113 Retention of Records**

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. The State may inspect such Financial and accounting records during the Audit Period, subject to the conditions described above in Section 2.112. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties**2.121 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments Exhibits, and Contractor's documentation for the Software identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) To Contractor's knowledge as of the effective date of this Contract, it is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the licensed use, as applicable, of any and all Deliverables.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must



assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable, to the extent Contractor is allowed to do so by the manufacturer.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Contract.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) To Contractor's knowledge as of the effective date, all financial statements and reports furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements and reports. To Contractor's knowledge as of the effective date, since the respective dates or periods covered by the financial statements and reports, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor that have not been provided as part of Contractor's public financial reporting obligations to the federal government.

(l) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

2.122 RESERVED - Warranty of Merchantability

2.123 RESERVED - Warranty of Fitness for a Particular Purpose

**2.124 RESERVED - Warranty of Title****2.125 Equipment Warranty**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

2.126 Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

2.128 Consequences for Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

2.130 Insurance**2.131 Liability Insurance**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims that may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a



recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.
See www.michigan.gov/dleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:
 \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including, vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

- ☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).



- ☒ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- ☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- ☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed; to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons.

2.140 Indemnification

2.141 General Indemnification



To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), resulting from any claim brought against the State by a third party that arises from any personal injury or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense resulting from any claim brought against the State by a third party that arises from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State by a third party to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it. The foregoing is the State's exclusive remedy and Contractor's entire obligation regarding any third party intellectual property claims.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

**2.145 Continuation of Indemnification Obligations**

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Contract.

- (a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.



2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of



the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

- (c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.



2.158 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with any Statement of Work agreed to by the parties to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed (90) days pursuant to a Statement of Work agreed to by the parties. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition. All transition services provided must be pursuant to a signed Statement of Work, with such services to be provided at the hourly rates described in such Statement of Work.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications in the applicable Statement of Work for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. Upon the State's written request, the Contractor will provide the State with the State's data provided to Contractor hereunder from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.



2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State and set forth in the applicable Statement of Work. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations upon which the State and the Contractor agree.

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the Services called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the Services covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the Services covered by the stop work order as provided in **Section 2.180**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this Section.



2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(3) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(4) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

(d) The dispute resolutions procedures in this Section 2.192 will not apply to any disputes involving Contractor's intellectual property.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy. Notwithstanding the foregoing or Section 2.192, Contractor may seek injunctive relief immediately in the event of any breach by the State of any licenses, license restrictions, or Contractor intellectual property rights.

**2.194 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements**2.201 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor.

This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.210 Governing Law**2.211 Governing Law**

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise.



2.220 Limitation of Liability

2.221 Limitation of Liability

Contractor's total and aggregate liability to the State, for any and all claims arising out of this Agreement, whether in contract, tort or otherwise, shall be limited to the value of the Contract. The foregoing limitation of liability shall not apply to claims under Section 2.140 for infringement of United States patent, copyright, trademarks or trade secrets; to claims under Section 2.140 for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, special damages. This limitation of liability shall not apply to Contractor's liability under Section 2.140 for claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to Contractor's liability under Section 2.140 for claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

Contractor must disclose any material criminal litigation, investigations or proceedings as of the effective date of this Contract involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act as of the effective date of this Contract. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding in effect as of the effective date of this Contract, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") in effect as of the effective date of this Contract within 30 days of the execution of this Contract. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated. Contractor's filing of publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (a) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a material breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must, upon written request from the State, provide the State all reasonable assurances requested by the State to demonstrate that:
 - (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and



- (2) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor must make the following notifications in writing:
 - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred,. Contractor's filing of publicly filed documents setting forth such change in ownership shall satisfy this requirement.

2.232 Call Center Disclosure

If requested by the State, Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 RESERVED Service Level Agreement (SLA)

2.243 RESERVED Liquidated Damages

2.244 Excusable Failure



Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery of Deliverables

A list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Custom Software Deliverable shall be set forth in the applicable Statement of Work, if applicable. All Deliverables shall be completed and delivered to the State and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in material conformance with its specifications. Before delivering a Deliverable to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such



quality assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

2.252 Contractor System Testing

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State. Contractor's System Testing shall include the following, at a minimum:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing as set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this **Section**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

2.253 Approval of Deliverables, In General

All Deliverables require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications in all material respects. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Any such refusal of delivery must be communicated to the Contractor in writing within 2 Business Days of the delivery. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with this Section.

Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all material failures in the Deliverable to materially conform with the specifications for such Deliverable that are identified to Contractor in writing during the initial review period for such Deliverable (each a "Deficiency").

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all Deficiencies preventing State approval of a Deliverable, the State may: (i) demand that Contractor cure



the Deficiency and give Contractor additional time to cure the Deficiency at the sole expense of Contractor; or (ii) keep this Contract in force and return the unaccepted Deliverables; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period. Contractor shall only be obligated to correct any material failures of the Deliverables to conform with the applicable specifications that are not identified by the State in writing during the initial review period for such Deliverable.

Approval in writing of a Deliverable by the State shall be final. Any such approval shall not affect the State's right to any warranty for such Deliverable as set forth in this Contract.

2.254 Process for Approval of Written Deliverables

The State Review Period for Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages; and the default for all other Deliverables shall be 10 Business Days). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any Deficiencies that must be corrected prior to approval of the Deliverable. If the State delivers to Contractor a notice of Deficiencies, Contractor will correct the described Deficiencies and resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified Deficiencies have been corrected. Notwithstanding anything in this Contract to the contrary, a Deliverable shall be deemed accepted by the State if the State does not notify Contractor of any Deficiencies during the applicable State Review Period.

Additional guidelines surrounding Document Deliverables

1. Draft documents are not accepted as final deliverables.
2. The documents will be reviewed in accordance with the requirements of the Contract and Appendices.5.

2.255 RESERVED - Process for Approval of Custom Software Deliverables

2.256 Final Project Completion

Final project completion is expressly conditioned upon completion of ALL deliverables/milestones set forth in Appendix A, completion of ALL tasks in the project plan as approved, and completion of ALL applicable inspection and/or testing procedures. The warranty period for the services Deliverables will start following project completion as set forth in **Appendix A**.



2.260 Ownership

2.261 Ownership of Work Product by State

Contractor owns all right, title and interest in and to the Deliverables and the Software. Contractor owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables and the Software.

2.262 RESERVED - Vesting of Rights

2.263 Rights in Data

The State is the owner of all State Data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use the State's personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

The State is the owner of all State Data under the Contract. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use Contractor's personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State. Notwithstanding anything in this Contract to the contrary, all right, title and interest (including all intellectual property rights) in and to the Software, Deliverables, documentation and training materials Contractor provides are owned by Contractor or its suppliers and are protected by intellectual property laws, including copyright, patent, trademark, and/or trade secret laws. Any rights not expressly granted herein are reserved to Contractor.

2.270 State Standards

2.271 Existing Technology Standards

See Article 1

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/dit-service>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.



2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access and configuration management procedures.

2.280 Extended Purchasing

2.281 RESERVED - MiDEAL (Michigan Delivery Extended Agreements Locally)

2.282 RESERVED - State Employee Purchases

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy: The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy: The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials: For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

- (a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.



- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Labeling: Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning: The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

Environmental Performance: Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Deliverables

2.301 Software

A list of the items of software the State is required to purchase is set forth in Appendix C attached. The attachment also identifies certain items of software to be provided by the State.

2.302 Hardware

A list of the items of hardware the State is required to purchase for execution is set forth in Appendix C. The list includes all hardware required to complete the Contract and make the Deliverables operable. The attachment also identifies certain items of hardware to be provided by the State.

2.303 Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.



2.304 Equipment to be New and Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

2.310 Software Warranties

2.311 Performance Warranty

For a period of 360 days following the effective date of this Contract ("Software Warranty Period"), Contractor warrants that the Software, as provided by Contractor during the Software Warranty Period, will in all material respects conform to and perform in accordance with Contractor's published documentation that comes with such Software. The State must report any breach of the foregoing warranty to Contractor in writing within the Software Warranty Period. The State's exclusive remedy for a breach of this warranty is the correction of any material reproducible nonconformity in such Software licensed hereunder so that it conforms to this warranty. If Contractor determines that it is unable to correct such Software licensed hereunder after using commercially reasonable efforts to do so, then Contractor's sole and exclusive obligation shall be to refund the fees actually paid for such Software licensed hereunder, provided that the State discontinues all use of the Software licensed hereunder and certifies that the State has done such and have destroyed all copies in its control.

For a period of 90 days following acceptance of a Deliverable ("Deliverable Warranty Period"), Contractor warrants that the Deliverable, as provided by Contractor during the Deliverable Warranty Period, will in all material respects conform to and perform in accordance with the mutually-agreed specifications for such Deliverable. The State must report any breach of the foregoing warranty to Contractor in writing within the applicable Deliverable Warranty Period. The State's exclusive remedy for a breach of this warranty is the correction of any material reproducible nonconformity in the Deliverable so that it conforms to this warranty. If Contractor determines that it are unable to correct the Deliverable after using commercially reasonable efforts to do so, then Contractor's sole and exclusive obligation shall be to refund the fees actually paid for such Deliverable provided that the State discontinues all use of the Deliverable and certifies that it has done such and has destroyed all copies in the State's control.

2.312 No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.



In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

2.313 Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

2.314 RESERVED - Third-party Software Warranty

2.315 Physical Media Warranty

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than (30) thirty days after delivery of the Software to the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

2.316 Warranty Disclaimer.

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS CONTRACT, THE SOFTWARE, HARDWARE, PROFESSIONAL SERVICES, TRAINING SERVICES, DELIVERABLES, AND MAINTENANCE SERVICES, ARE PROVIDED "AS IS" AND CONTRACTOR EXPRESSLY DISCLAIMS ANY EXPRESS, IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS (INCLUDING THOSE BY CONTRACTOR'S SUPPLIERS), INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR QUIET ENJOYMENT, AS WELL AS ANY WARRANTIES THAT THE SOFTWARE, HARDWARE, PROFESSIONAL SERVICES, TRAINING SERVICES, DELIVERABLES, AND MAINTENANCE SERVICES WILL BE FREE OF INTERRUPTIONS OR ERRORS. Some jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to the State. THIS LIMITED WARRANTY GIVES THE STATE SPECIFIC LEGAL RIGHTS, AND THE STATE MAY HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

2.320 Software Licensing

(a) License Grant. Contractor hereby grants the State, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable, irrevocable, non-assignable perpetual right and license, without right of sublicense, to (i) install the Software and Service Deliverables in machine-readable object code format on an unlimited number of servers owned or leased by the State or by a third party hosting service (or by Contractor if Contractor is hosting the Software and Service Deliverable) and maintained for access solely by the State and (ii) permit the Software to be accessed or used as provided herein by



no more than the number of Named Users set forth in Appendix D. The State may make a reasonable number of copies of the Software solely for archival and back up purposes.

The State warrants that it is authorized to bind, and by virtue of its execution hereof, binds Named Users to the terms and conditions of this Contract as if the Named Users were the State. Named Users hereby assume all of the State's obligations under this Contract. The State shall guarantee that all Named Users will assume and abide by all of the State's obligations under this Contract. The State shall be jointly and severally liable for any damages sustained by SumTotal due to the State's breach of the foregoing warranty and guaranty.

(b) Management of Named Users. Each individual permitted to access or use a component of the Software must be assigned a user login account with a unique user identification and password and will be considered a Named User of that component for purposes of the allowed number of Named Users hereunder. The State may not permit more than one person to access or use a single login account or unique user identification and password to access or use the Software or otherwise share login accounts, user identifications or passwords. If the State deactivates Named Users, the State may maintain records in the database for such individuals, but the State may not maintain login accounts for such individuals or otherwise permit them to access or use the Software. The State may not deactivate a Named User's access to or use of the Software and assign such access or use to another individual, except that the access or use by a Named User: (i) who is no longer employed or engaged by the State, (ii) who has been transferred to a division that does not access or use the Software or (iii) that has terminated the relationship with the State, whether voluntarily or involuntarily, with the State, may be deactivated by the State and reassigned to another individual, who then shall be a Named User. In no event shall the total number of individuals that the State allows to access or use the Software exceed the number of Named Users licensed hereunder.

(c) Commercial Use. The State may permit the Software to be accessed and used only to (i) develop State Materials; (ii) deliver training to the State's employees, consultants, contractors, suppliers, distributors, resellers and customers; and/or (iii) process and manage data related to such training. The State may charge a fee for any training delivered or managed using the Software. The State may not use the Software to deliver training or manage data on behalf of any other organization, whether or not the State is paid a fee for processing or managing such data. The State may not use the Software to provide software or content development services to third parties.

(d) License Configuration. The State shall upgrade to a larger number of licensed Named Users if the number of individual persons who will access or use the Software exceeds the number of Named Users permitted by the State's then current number of licensed Named Users. The State may elect to license additional Software components, optional modules or languages, or add Named Users as agreed to by Contractor in a written amendment signed by both parties.

(e) Restrictions on Use. The State may not: (i) use, copy, modify, translate, merge or create derivative works of the Software, Service Deliverables, documentation or training materials except as expressly provided in this Contract; (ii) disable or circumvent any licensing control feature in the Software or Service Deliverables; (iii) reverse-engineer, disassemble, or decompile the Software or Service Deliverables or otherwise attempt to access or determine its underlying source code, underlying ideas, underlying user interface techniques or algorithms, or permit any such actions; (iv) distribute, lend, sublicense, rent or lease all or any portion of the Software or Service Deliverables or use the Software or Service Deliverables on a service bureau or time-share basis or as an application service provider; (v) provide access to or enable use of the Software or Service Deliverables by any individual other than a Named User, (vi) disclose the results of any benchmarking of the Software or Service Deliverables (whether or not obtained with SumTotal's assistance) to third parties; (vii) use the Software or Service Deliverables to develop or enhance any product that competes, directly or indirectly, with the Software or Service Deliverables; (viii) remove the copyright, trademark, or any other proprietary rights or notices included within the log in screen of the Software or Service Deliverables and on and in the



documentation and training materials or (ix) use the Software or Service Deliverables in a manner that would violate any law applicable to the State.

2.330 Source Code Escrow

Contractor will maintain the source code of the supported versions of the Software (determined in accordance with Appendix D, Section C4(b) of the Customer Support section) in an escrow account with Iron Mountain. The terms and conditions related to such source code escrow account are set forth in Appendix D, Section C4(b) of the Customer Support section.



Appendix A
Statement of Work (No. 1) for Professional Services

This Statement of Work No. 1 ("Statement of Work") is effective March 31, 2009, by and between the State of Michigan ("you") and SumTotal Systems, Inc. ("we" or "us").

1. This Statement of Work is subject to all the terms and conditions of the Contract No. 071B9200193 between the State of Michigan and SumTotal Systems, Inc. dated March 31, 2009, ("Contract").
2. We will be providing you the professional services under the terms and conditions of the Contract, in accordance with the Statement of Work set forth in Schedule A.
3. Personnel. Our personnel and authorized contractors shall perform the professional services.
4. Point of Contacts. Our Point of Contact is Tom Klopfer. Your Project Manager/Point of Contact is TBD.
5. Billing Information. All invoices to you for professional services will be sent to the following address:

Your Billing Information:

MICHIGAN DEPT OF INFORMATION TECHNOLOGY
PROCUREMENT - 1ST FLOOR, NORTH TOWER
CONSTITUTION HALL
525 W. ALLEGAN
LANSING MI ZIP: 48913
Attn: SHARON CARTER
Phone: 517 335-4038



Schedule A – Specifications of Statement of Work

1.0 Overview

We are pleased to submit this Statement of Work in response to your request for our professional services. This Statement of Work is for professional services required to deploy a Pathlore Learning Management System Enterprise version 6.6

Learning Management System (LMS) Implementation Overview

The SumTotal Delivery Process is a phased approach for the implementation of the Learning Management System. This approach is based on SumTotal's extensive experience successfully implementing other customers.

SumTotal understands that successful solutions are the result of a process—not a single event. Only through careful alignment of strategy, business processes, design, technology, and people can you achieve your business objectives. Through a phased approach, the Services provided by SumTotal will combine project management with technical and business-focused services. SumTotal will deliver the Services in the phases more particularly described below, titled Plan, Analyze, Build/Test, and Deploy.

Plan Phase

The Plan Phase includes the completion of project planning, project documentation as identified in the project Service Related Items section, and scheduling of SumTotal and Customer resources. Together, SumTotal and Customer will review business requirements and project expectations during this Phase to validate the contracted scope, level of effort, resource requirements, roles & responsibilities, and general conduct of the project.

Analyze Phase

Both parties must define and agree upon business requirements during the Analyze Phase. SumTotal and Customer will work together to define how Customer's business requirements will be configured in the application. In addition, this Phase includes analysis of technical requirements and I.T. infrastructure, system and web interface, reporting, data import, data export, data migration, additional system interface(s), Web design requirements and definition of the system test plan.

Build/Test Phase

The Build/Test Phase prepares the system for go-live. This includes system installation and configuration of the Learning Management System Software, as well as all report, interface, data migration, Web and correspondence.

Deploy Phase

During the Deploy Phase, the system is moved into the production environment and is deployed to the end users. This Phase includes all planning, preparation, go-live, and post-go-live tasks.



Project Overview

Project Scope

Documented below are the tasks performed and the Service Related Items created during this project.

Task	Description	Deliverables
PLAN PHASE		
<u>Project Organization</u>	The purpose of this task is to transition the Learning Management System Implementation Project from the SumTotal Sales Team to the SumTotal Implementation Services Team. Key information communicated during the sales phase is transitioned to the Implementation Services Team for review and analysis.	
<u>Preliminary Project Planning</u>	During this task, the SumTotal Implementation Services Project Manager will prepare the initial planning documents and distribute the agenda and preliminary project schedule in preparation for the onsite Project Planning Meeting with the Customer. In addition, arrangements are confirmed with the Customer as to the expectations and Customer participation for the Project Planning Meeting.	<ol style="list-style-type: none"> 1. Review of kick-off checklist 2. Project Planning Meeting Agenda 3. Preliminary Project Schedule in MS Project 4. Preliminary Project Communications Document
<u>Project Planning Meeting</u>	<p>During the Project Planning Meeting, the SumTotal Implementation Services Team meets with the Customer to discuss, analyze, and plan for the installation of the Pathlore Learning Management System. The project team discusses and finalizes the scope of the implementation, the project plan is outlined, and resources requirements are determined. All project material during this phase is confirmed with and approved by both the SumTotal Implementation Services Project Team and the Customer.</p> <p>Additionally, the overall testing approach, the deployment/go-live approach, and the end-user training approach are discussed during the planning meeting.</p>	<ol style="list-style-type: none"> 1. Finalized Technical Scope Document 2. Learning Management System Architecture Document 3. Finalized Project Schedule in MS Project 4. Finalized Project Communications Document 5. Project Status Reports (ongoing throughout implementation) 6. Action Items List
ANALYZE PHASE		
<u>Configuration Workshop – LMS</u>	During the Configuration Needs Assessment, the SumTotal Implementation Services Team works with the Customer in a collaborative effort to gain a detailed understanding of the Customer's business and technical requirements as they apply to the Learning Management System implementation. All	<ol style="list-style-type: none"> 1. LMS Configuration Workbook (Used by the Customer for understanding and documentation of the core LMS configuration needs and analysis) <p>The Following core configuration</p>



Task	Description	Deliverables
	<p>information during this phase will be documented in a method that will provide assistance with the configuration and setup of the Learning Management System within the Customer's environment.</p>	<p>Items are identified and will be included in the Configuration Workbook:</p> <ul style="list-style-type: none"> • Approximately Twenty-five (25) additional Database Fields will be analyzed and documented. • Approximately Ten (10) additional Database Fields with Lookup Tables will be analyzed and documented. • Approximately Three (3) Security Profiles will be analyzed and documented. • Approximately Three (3) Database Partitions will be analyzed and documented • Ten (10) Class owners will be analyzed and documented. • Registration Screening will be analyzed and documented. • Two (2) Mail/Correspondence Notifications will be analyzed and documented. • Two (2) Groups will be analyzed and documented. • Two (2) Curriculums will be analyzed and documented. • Two (2) modifications to built-in views will be analyzed and documented. • Analysis and documentation of One (1) Learning Center Configurations • Analysis and documentation of Two (2) Manager Process Configurations • Analysis and documentation of Two (2) Resource Planning Configurations • Analysis and documentation of Two (2) Resource Group Configurations • Analysis and documentation



Task	Description	Deliverables
		<p>of the use of Batch Reporter</p> <ul style="list-style-type: none"> • GroupWise integration with calendaring • Phone Self-Service (Phase II)
<u>Configuration Workshop – Approval Process</u>	During the Configuration Needs Assessment, the SumTotal Implementation Services Team will work with the Customer in a collaborative effort to gain a detailed understanding of the Customer's business and technical requirements as they apply to implementing the detailed approval process in Pathlore LMS. All information during this phase will be documented in a method that will provide assistance with the configuration and setup of the Learning Management System within the Customer's environment.	<ol style="list-style-type: none"> 1. Approval Process Configuration Addendum (Used by the Customer for understanding and documentation of the approval process configuration needs and analysis) <p>The following Approval Process configuration items are identified and will be included in the Configuration Workbook.</p> <ul style="list-style-type: none"> • TBD
<u>Technical Design/Analysis</u>	During this task, the SumTotal Implementation Services Team will analyze in a collaborative manner with the Customer, the technical requirements of the Learning Management System implementation. This analysis can include but is not limited to the information technology infrastructure, Learning Management System hardware and operating system software, technical interfaces (if required), required internal information technology standards, reporting requirements, database conversions, and system integrations.	<ol style="list-style-type: none"> 1. Technical Analysis Document <ul style="list-style-type: none"> • Analysis and documentation of the Customer's hardware and operating systems • LMS Architecture Document 2. Analysis of the upgrade requirements from Pathlore Registrar Classroom to Pathlore Enterprise 6.6. 3. Analysis and documentation of One (1) re-occurring Data Imports utilizing the Pathlore Integration Manager. <ol style="list-style-type: none"> a. State HRIS System 4. Analysis, design, and documentation of One (1) Customer's "Web Look & Feel" requirements for the Learning Center web interface. This includes up to three (3) mock-ups of the interface design for Customer approval. The mock-up(s) require Customer sign-off before proceeding with the build, quality assurance, and deployment of the Web interface.



Task	Description	Deliverables
		5. Analysis and documentation of Single Sign On Process 6. Analysis and documentation of Phone Self-Service module
<u>Content Integration Analysis</u>	This module provides for analysis of the integration of Online Learning courseware.	1. Analysis and documentation of Six (6) content samples: <ol style="list-style-type: none"> Quick Knowledge ToolBook Dream Weaver Blackboard Flash Captivia 2. The use of DirectURL's with launching pre-recorded Elluminate virtual classes
<u>Content Standards Analysis</u>	<p>This module provides for analysis of Customer's existing online courseware to determine its level of compliance with the AICC and SCORM standards. The analysis will determine ability to integrate into the LMS, as well as, determine remediation options should it not be compliant.</p> <p>SumTotal makes the assumption that the Customer's courses are of a similar structure and design, were authored with the same authoring tool or software, and have the same interoperability requirements, the results of the testing of this one course, can be reasonably applied to all of the courses. Courses that differ significantly from the test course profile can be analyzed at an additional cost.</p> <p>Each online course analysis estimates one (1) day per one (1) hour of online course content. Several factors may affect this estimate, including length, complexity, media, and others.</p> <p>The analysis will only determine ability and the level of effort to integrate that specific course into the Pathlore LMS, and includes the following activities:</p> <ul style="list-style-type: none"> Load and test the course in the Pathlore LMS environment Identify areas for corrections and/or enhancements related to the LMS API function calls for AICC and SCORM 	1. SumTotal will assess adherence to applicable standards and ability to integrate online courseware from the following : <ol style="list-style-type: none"> Internally developed <ol style="list-style-type: none"> One (1) Course Hour from a Third Party vendor



Task	Description	Deliverables
	<p>compliance</p> <ul style="list-style-type: none"> Provide SumTotal's findings (in writing) from the testing to Customer upon completion of the testing session <p>Before testing begins, Customer will provide SumTotal with a detailed list of requested requirements for such items as book marking, student tracking, etc. All testing will be performed by SumTotal.</p> <p>The level of effort to enhance or correct the course is NOT included in this SOW. This effort would require a Change Order after the analysis is complete. This Change Order will include a scope of work to address the enhancements or corrections required.</p>	
<u>Test Preparation</u>	The Customer and the SumTotal Implementation Services Team will jointly develop the overall test strategy and approach for testing the LMS. Sample test plans will be used as the basis for the test strategy.	<ol style="list-style-type: none"> 1. Sample Customer Test Plan 2. SumTotal System Test Plan (checklist)
BUILD/TEST PHASE		
<u>Product Installation – LMS</u>	<p>The SumTotal Implementation Services Team and the Customer will install the Learning Management System and all of its related components in the appropriately prepared Customer environment.</p> <p>NOTE: SumTotal recommends maintaining the development/test environment as a long-term environment for testing online courseware, future LMS upgrades, etc. SumTotal recommends this as a best practice to ensure that these types of on-going activities have no impact on the production environment.</p>	<ol style="list-style-type: none"> 1. LMS Installation includes the following SumTotal components in a development (test) environment: <ul style="list-style-type: none"> • Installation of the LMS Components on One (1) Oracle Database Server • Installation of the LMS Components on One (1) Application Server • Installation of the LMS Components on One (1) Web Server • Installation of One (1) instance of the Pathlore LMS Database Utility Application • Installation of Mail components on standalone mail hardware • Installation of Phone Self-Service (Phase II) • Installation of Batch Reporter 2. LMS Installation includes the following Pathlore



Task	Description	Deliverables
		<p>components in a production environment:</p> <ul style="list-style-type: none"> • Installation of the LMS Components on One (1) Oracle Database Server • Installation of the LMS Components on One (1) Application Server • Installation of the LMS Components on One (1) Web Server • Installation of Three (3) instance of the Pathlore LMS Database Utility Application • Installation of Mail components on standalone mail hardware • Installation of Batch Reporter • Installation of Phone Self-Service (Phase II)
<u>Product Configuration – LMS</u>	The SumTotal Implementation Services Team will configure the Learning Management System according to the Configuration Needs Assessment performed, documented, and agreed upon by the Customer in the Analyze Phase of this project.	<ol style="list-style-type: none"> 1. Configuration of the Learning Management System based on the approved and signed Configuration Worksheet developed during the LMS Configuration Workshop Task. 2. GroupWise integration
<u>Product Configuration – Approval Process</u>	The SumTotal Implementation Services Team will configure the Approval Process in the LMS according to the Configuration Needs Assessment performed, documented, and agreed upon by the Customer in the Analyze Phase of this project.	Configuration of the Approval Process based on the approved and signed Configuration Workbook developed during the Approval Process Configuration Workshop Task.
<u>Technical Configuration</u>	This task consists of the SumTotal Implementation Services Team configuring and/or building the technical components that were identified, documented, and agreed upon in the Technical Design/Analysis Task of the Analyze Phase of this project.	<ol style="list-style-type: none"> 1. Technical Configuration of the Learning Management System based on the approved technical documentation developed during the Technical Design/Analysis Task. 2. Customized Web look and feel of Learning Center <ul style="list-style-type: none"> • Build agreed upon Customer's required look and feel of the Learning



Task	Description	Deliverables
		Center <ul style="list-style-type: none"> • Perform quality assurance of the interface modifications • Deploy in LMS
<u>Content Installation</u>	During this module, the SumTotal Implementation Services Team will perform the installation and configuration of online content and its related components as identified, documented and agreed upon by both the SumTotal Implementation Team and the Customer.	1. Content Installation based on the approved documentation developed during the Content Integration Analysis Task.
<u>Requirements Testing</u>	The SumTotal Implementation Services Team will test the installation, configuration, and interface(s) of the Learning Management System.	1. Documented System Test Plan Checklist 2. Updated Issues List with resolutions 3. Updated LMS Configuration Workbook 4. Customer Sign-Off that system is ready to be moved to production
<u>End-User Procedures and End-User Training</u>	The Customer will be responsible for training End Users on the use of new LMS. The SumTotal Implementation Services Team can assist in the structure and review of this training, but will not be responsible for its conduct.	1. Develop end-user procedures 2. Conduct end-user training NOTE: These tasks and deliverables are performed by the Customer. NOTE: Refer to section 4.0 for purchased formal training courses.
DEPLOY PHASE		
<u>Pre-Production Planning</u>	During this task, the Customer will leverage the SumTotal Implementation Services Team's experience by providing assistance to help the Customer plan for the move of the Learning Management System into production and the roll out to the End User community.	1. Pre-Production and go-live checklist
<u>On-Site/Remote Project Support</u>	During the course of this task, the SumTotal Implementation Services Team will provide on-site (or remote) support to the Customer during the roll out of the Learning Management System. This task allows the Customer to get assistance to questions and/or issues that may arise as the Customer introduces the Learning Management System to its End User community.	1. Debrief Document
<u>Product Go-Live</u>	During this task, SumTotal's Implementation Services Team in collaboration with the	1. Approved and Delivered Learning Management



Task	Description	Deliverables
	Customer's project team move the Learning Management System into a production state for access by the Customer's End User community.	System
<u>Project Completion</u>	During this module, the SumTotal Implementation Services Team will complete all product documentation as it pertains to this project. In addition, the SumTotal Project Manager will introduce the Customer to the SumTotal Technical Support organization for ongoing support, questions, and issues that may arise during the Customer's future use of the LMS. All material that has not been provided to the Customer during the project will be presented to them at this time.	<ol style="list-style-type: none"> 1. Completed Technical Documentation on the Learning Management System 2. Completed Learning Management System Architecture Document 3. Completed Project Schedule in MS Project 4. Completed Project Budget 5. Completed Action Items List
Project Completion Customer Success Checkpoint	SumTotal will review original agreed-upon Business Requirements for the implementation and work with the customer to identify areas that need to be re-aligned in order to meet objectives. The SumTotal implementation team will review and provide additional feedback on best practices and product use as appropriate to ensure customer agreed-upon Business Requirements and Objectives are reached.	<ol style="list-style-type: none"> 1. Revisit Original Project Objectives and Goals 2. Develop Action Plan to make required adjustments <ol style="list-style-type: none"> a. 2 Days of Ad Hoc coaching with Product Specialist. Topics to review include but are not limited to: <ol style="list-style-type: none"> i. System Manager ii. Design Center iii. Approval Process iv. Resources b. Apply Service Packs if available c. Produce Debrief/Action Document

This Statement of Work is for work to be performed by us at your request. It is separate from work outlined in any previous agreements between the parties. This Statement of Work does not cover any other work requested by you.

2.0 **Estimated Fees**

This Statement of Work is based on preliminary discovery discussions with you. Additional effort may be required to refine your needs. All professional services to be performed by us for each Project Task will be invoiced as set forth in Section 3.0 below on a fixed fee basis.

Any changes to the scope of this Statement of Work shall result in a change order to this Statement of Work or a new statement of work. Notwithstanding the foregoing, you will pay us for all services



provided hereunder. All change orders and new statements of work will be billed on a time and materials basis unless otherwise negotiated. Scheduling for the professional services to be performed will be based upon a first come first serve basis and will be mutually agreed upon by the parties prior to the commencement of the professional services hereunder.

To assist you in budgeting for this Statement of Work, we are able to provide the following budgetary guidance. All services are fixed fee and include travel expenses. The total costs reflect an 8% discount off of our standard implementation package for professional services.

Budgetary Guidance

Project Task	Role	Total RFP Costs
Project Management	PM	\$ 32,200.00
Implementation Consulting	IC	\$ 55,200.00
Product Specialist	SP	\$ 58,880.00
Phone Self-Services	PM/IC	\$ 11,040.00
Project Consulting	PM/IC	\$ 10,580.00
	SP	\$ 11,960.00
Train the Training Consulting	SP	\$ 12,880.00
Training Administration Fundamentals	TR	\$ 19,320.00
System Management Training	TR	\$ 19,320.00
Estimated Total		\$ 231,380.00

This estimate is valid until March 30, 2009.

3.0 **Invoicing Schedule**

Contractor will invoice the State based on the following schedule for services and deliverables under this statement of work. Contractor will invoice based on the completion of each project phase listed above upon the State's acceptance of the applicable milestone with the billable amounts shown below and based on acceptance criteria 2.250. If Contractor and the State mutually agree Contractor may move on to a subsequent phase(s) and provide services under that phase(s) prior to completing or reaching acceptance for a prior phase(s).



Invoice Milestone	Acceptance Criteria	Invoice Amount
Completion of the Plan Phase	Deliverables stated for the tasks specified in the planning phase have been completed and provided to MI DHS.	\$52,060.50
Completion of the Analyze Phase	Deliverables stated for the tasks specified in the Planning phase have been completed and provided to MI DHS.	\$52,060.50
Completion of the Build/Test Phase	Deliverables stated for the tasks specified in the Build/Test phase have been completed and provided to MI DHS.	\$52,060.50
Completion of the Deploy Phase	Deliverables stated for the tasks specified in the Deploy phase have been completed and provided to MI DHS.	\$52,060.50
Final payment – based on 10% holdback of total contract value: Due 90 days after completion of the deploy phase	N/A – Solely based on 90 days after the completion of the deploy phase.	\$23,138.00
TOTAL		\$231,380.00

4.0 **Miscellaneous**

We assume that a dedicated Project Manager is available from you. This Project Manager will act as the central point of contact for the professional services that we will render for this Statement of Work.

This Statement of Work was developed based on conversations with you. Additional discovery effort may be required to refine and specify each of the Project Tasks in this Statement of Work. You will be notified in advance of this situation and all reasonable efforts will be made to manage expectations to work towards a mutually successful implementation.

We believe the requirements and specifications provided in this Statement of Work are sufficient to allow the work to begin and be completed with a reasonable expectation that the total cost estimate will be realized; however, we cannot guarantee the estimate.

The performance of this Statement of Work involves activities to be performed by both parties. If during the performance of this Statement of Work we do not receive your deliverables as scheduled, then our ability to complete this Statement of Work in a timely manner will be jeopardized. We will notify you should this occur, and will notify you of the impact with regards to additional expenses and subsequent schedule changes as set forth in the Contract.

System Management

This three-day, hands-on workshop provides basic instruction on the set-up, use of, and ongoing maintenance of Pathlore Learning Management System (LMS) 6.6. The focus of the workshop is on the LMS Database Utility application and the Web-based System Center, although related features and functions of the Administration Centers are discussed. This course also provides a high-level overview of the Design Center. Course Goals When you finish this class you'll be able to:



Describe the components and architecture of LMS	Identify the responsibilities of a system manager	Understand basic issues related to installation and upgrade
Work with fields and lookup tables to configure the LMS interface	Create new views.	Import, modify, and deploy a Learning Center client
Configure settings related to class resources	Set up registration-related processes	Set up mail-related processes
Define LMS user security	Set up audit trails and e-signatures	Use LMS functions to make global changes
Import person data into LMS	Modify Web-calendar templates	Monitor LMS user connections and activity

Day 1: LMS Overview, Getting Ready, Configuring Your LMS, Design Center Overview, Managing Mail

Day 2: Defining Class Resource Settings, Managing Registrations, Setting Up Registration Approvals, Controlling Data Access, Enabling Tracking Features

Day 3: Setting Up Other Beneficial Features, Global Change, Importing Data, Miscellaneous System Manager Tasks



Appendix B

Functional and Technical Requirements

The following table states functional requirements for the system. Functional requirements identify what the product or system must do to enable performance of work tasks.

	Functional Requirements
1	<i>General System</i> The system must:
1-01	Have the ability to add new fields to forms.
1-02	Be able to produce customized reports by allowing Crystal Reports to generate the reports.
1-03	Be able to import data from other sources
1-04	Have the ability to generate student transcripts
1-05	Have the ability to archive students and classes
1-06	Have the ability to wait-list students
1-07	Provide an automated phone dial-in system for class registrations of Non-MDHS partners who need to participate in the training.
1-08	Provide a web-based learning management system with access for all MDHS employees.
1-09	Have the ability to launch and deliver classes online.
1-10	Manage and track virtual classroom events, to include: traditional classroom, self-directed on-line, instructor-led online, web-based, video-delivered, college courses
1-11	Track training history for each user and make it available online.
1-12	Manage students on wait-lists for classes



	Functional Requirements
1-13	Track results from third-party online classes that are SCORM or AICC compliant.
1-14	Provide online and printable reports. The State must be able to control what information appears on the report.
1-15	Track curricula
1-16	Have the ability to receive an HR data feed from the State's HRIS
1-17	Create and deliver training evaluation/assessments
1-18	Provide online web access for all MDHS employees to the training catalog, curriculums, personal development plans and transcripts
1-19	Have a single repository for all staff training and history
1-20	Launch third party web-based training sites including, but not limited to, QuickKnowledge.com from the LMS and training results recorded in the LMS, provided that any additional third party web based training must be SCORM or AICC compliant.
2	<i>Trainee information screens must provide the following:</i>
2-01	Employee ID
2-02	Employee name Last, First, Middle initial
2-03	Sex
2-04	Race
2-05	Handicap indicator
2-06	Job appointment date
2-07	Job Function
2-08	Job Code
2-09	Special needs indicator
2-10	DHS Employee indicator
2-11	Central Office Department name



	Functional Requirements
2-12	County office code
2-13	Zone
2-14	District Office Code
2-15	Office Mailing Address
2-16	Phone number
2-17	Trainee FAX
2-18	Trainee Email
2-19	Supervisor Name
2-20	Supervisor Phone
2-21	Supervisor FAX
2-22	Supervisor Email
2-23	Employment Status
2-24	Termination Date
3	<i>The class information screen must have the following fields:</i>
3-01	Training Unit
3-02	Course Code
3-03	Class Code
3-04	Consecutive Day Indicator
3-05	Class Start Date
3-06	Class End Date
3-07	Sessions
3-08	Last Date to Cancel
3-09	Start Time



	Functional Requirements
3-10	End Time
3-11	Class Hours per Day
3-12	Days
3-13	Second start date
3-14	Second start time
3-15	Primary instructor
3-16	Primary instructor
3-17	Trainer type
3-18	Trainer phone
3-19	Trainer 2 Name
3-20	Trainer 2 Type
3-21	Trainer 2 Phone
3-22	Minimum Class Capacity
3-23	Maximum Class Capacity
3-24	Training Site Name
3-25	Site Contact person
3-26	Site Street Address
3-27	Registrar Room
3-28	Site City
3-29	Site State
3-30	Site Phone
3-31	Site FAX
3-32	Class Owner



	Functional Requirements
3-33	Registration Reserved for owner
3-34	Registration Staff
3-35	Outline course ID
3-36	Online Only Indicator
4	<i>The registration screens must collect the following:</i>
4-01	Registrations
4-02	Actual Days Attended
4-03	Registration Status
4-04	Job Function\Title
4-05	Status Group
4-06	8 or more scores
4-07	Has a note
4-08	Waitlist Position
4-09	Status Date
4-10	Status Time
4-11	Status Group Date
4-12	Registration Number
4-13	Online Maximum Score
4-14	Online Raw Score
4-15	Online Total Time
4-16	Online Last Time
4-17	Online Total Attempts
4-18	Online Current Attempts



	Functional Requirements
4-19	Online Number of Browsers
4-20	Online Ending Status
4-21	Online First Attempt
4-22	Online Last Attempt
4-23	Date Imported



Appendix B

2) Technical Requirements

The following table states technical requirements for the Software as of the effective date of the Contract, and shall apply only in all material respects to the Software as initially delivered to the State under the Contract. Such requirements shall not apply to any future versions, updates or upgrades of the Software or to any changes to the State's system.

	Technical Requirements
1	<i>System Architecture</i>
1-01	The system employs a browser-based architecture accessing a central database through software on a server.
1-02	The system places no limit on record size. Field sizes can be user defined, but must meet database field size requirements.
1-03	The software is expandable and portable
1-04	The system is capable of being operated by State staff with no dependency on Vendor services for its routine operation.
1-05	The system server is compatible with the recommended hardware configurations set forth in Appendix C of this Contract.
1-06	The system's recommended hardware configurations are set forth in Appendix C of this Contract.
1-07	The system is portable from one OS/RDBMS to another, i.e., from Unix to Windows 2000, or from one platform/OS to another, e.g., Sun Solaris to IBM AIX, etc. to the extent set forth in Appendix C of this Contract and within the limits of the Software's applicable documentation published by Contractor.
1-08	The system must provide audit trail capabilities for the save and deletion of Curriculum, Registrations, People, Groups, Courses, Logins for students and Administrators.
2	<i>Software Licensing</i>
2-01	The software license is for perpetual use of the software as delivered by Contractor for a fixed fee without additional royalties.
3	<i>Hardware</i>
3-01	Vendor's recommended hardware platform/topology functions in the following areas: <ul style="list-style-type: none"> ○ Remote access and administration can be configurable. ○ Application installation, administration and support ○ Support for a variety of TCP/IP network configurations ○ Support wireless LAN and WAN configurations that support TCP/IP.



	Technical Requirements
4	<i>RDBMS / Applications / Database Management</i>
4-01	The system is available with the relational database management systems to the extent set forth in Appendix C of this Contract.
4-02	Full-text indexing and a full-text database search feature are available to provide easy retrieval of records.
5	<i>Security</i>
5-01	<p>PCI Compliance</p> <p>Within 10 business days of the effective date of this Contract ("PCI Testing Period"), the State will install and scan the Software using QualysGuard software to determine whether it is PCI compliant in all material respects ("PCI Test"). The State will notify Contractor in writing ("PCI Notice") within the PCI Testing Period whether the Software has passed the PCI Test. If the Software does not pass the PCI Test, the State will identify in the PCI Notice all aspects in which the Software did not pass the PCI Test. Upon receiving the PCI Notice, Contractor may elect to either (1) use commercially reasonable efforts to correct the PCI noncompliance identified in the PCI Notice, or (2) allow the State to terminate this Contract and refund all software license fees and maintenance service fees paid hereunder, provided the State uninstalls and destroys all copies of the Software in its possession or control.</p> <p>If Contractor chooses to correct the PCI noncompliance, the process described in the paragraph above will be repeated, with the PCI Testing Period to begin upon Contractor's delivery of the updated Software. If the Software again fails the PCI Test, the State will indicate in its second PCI Notice of its intent to either terminate this Contract as described above or request that Contractor again use commercially reasonable efforts to correct the PCI noncompliance. This process will be repeated until either the Contract is terminated or the Software passes the PCI Test.</p> <p>Notwithstanding the foregoing, if Contractor does not receive a PCI Notice within the applicable PCI Testing Period, the Software will be deemed PCI compliant and to have passed the PCI Test.</p>
6	<i>Security / Access Control</i>
6-01	The system enables the ability to require a user ID and password to access the system.
6-02	The system provides secure access control based upon unique user login, for types of record (e.g., fund, order) as well as by function performed upon the record (e.g., Display, Add, Edit, Delete.)
6-03	The system enables administrators to set access privileges for users of the system.
6-04	The system provides varying levels of access within the application, such as administrators, view only, or scheduling only.
7	<i>Security/Password Controls</i>



	Technical Requirements
7-01	The system provides an enforced minimum length for passwords.
7-02	The system provides for password expiration after a defined period has passed, such as 30, 60 or 90 days.
7-03	The system provides users with the capability to change their own passwords.
7-04	The system disables user ID's after a specified number (3) of consecutive invalid login attempts.
7-05	The system provides the ability to hide or mask the password field.
7-06	The system encrypts passwords when they are routed over the network, if using SSL.
7-07	The system encrypts passwords in system storage.
8	<i>Security/Activity Logging</i>
8-01	The system has audit functionality for administrator and student login failures.
8-02	The system has audit functionality for administrator and student login failures.
8-03	Provides security reports of users and access levels.
9	<i>Software Package Specifications</i>
9-01	The software uses an Oracle 10G relational database management system. The system requirements are set forth in Appendix C of this Contract.
9-02	The software will operate effectively on State hardware as set forth in Appendix C of this Contract or as otherwise defined by Vendor in writing with Vendor-supplied upgrade recommendations. Vendor's current hardware Requirements are set forth in Appendix C of this Contract.
9-03	The software allows the State, from PC workstations, to access and update information to complete a transaction.
9-04	The software allows for the input and extraction of State data.
9-05	The software provides data reporting capabilities as identified by Contractor in its standard published documentation for the software.
9-06	The software provides a Graphical User Interface (GUI) that provides data, calculation, reporting, and communication capabilities to State users.
9-07	The system is modular in design to accommodate phased implementation and future expansion.



	Technical Requirements
9-08	The modularity allows the capabilities of the core systems to function without the entire system complement.
9-09	Additional modules may be integrated into the system without a major impact to the installed components.
9-10	All modules of the system are integrated and designed to work together using a single input and a common database with no redundant data entry or data storage.
9-11	The system supports paperless processing through the use of electronic documents that are routed for electronic signatures through user-defined approval paths.
9-12	The system prevents transaction data from being posted in the system unless all members on the approval path have approved the associated electronic document.
9-13	The system has the ability to accept and output transactions in standard electronic data interchange (EDI) formats.
9-14	The system has the ability to accept batch entry from external sources.
9-15	The system provides the ability to import data in the following formats: DBF and Text-based Delimited.
9-16	The system provides the capability to import scanned image files into the system through the system's Content Center.
10	Reporting
10-01	Standard reports to be scheduled, executed, viewed on-line, printed (centrally or remotely) and dispersed (including the use of report distribution management software to the extent identified in Contractor's standard published documentation for the software, through the assistance of Contractor's professional services)
10-02	Offices and work locations to control which standard reports they do and do not receive.
10-03	The State to control the information that appears on standard reports.
10-04	The system provides for methods for retaining and modifying previously built queries in Gap Analysis.
10-05	The system provides for security and control mechanisms that define control access to the system and accessing ad hoc queries.
11	Audit Trail
11-01	The system enables the user to modify data entry transactions that have already been posted to the database while maintaining an audit trail of the change.



	Technical Requirements
11-02	The system's internal control functionality ensures that the data entry and processing associated with a business event has been completed before updating the database.
12	Edit and Validation Control
12-01	The system includes field edits to prevent incomplete or incorrect data from entering the system through user defined settings.
12-02	The system provides for data integrity and controls processing without hard-coded logic through user defined settings.
13	Environment
13-01	For any activities not performed on State sites or facilities, the Vendor will provide reasonable physical security measures as are standard in the industry to protect the State's Confidential Information.
14	Interfaces
14-01	The system has the ability to exchange data with other systems using the following mechanisms: online application to application, web services interface, FTP and SFTP; provided that the complexity of the request might require additional professional services from Contractor.
14-02	The system must provide real-time data transfer of identified data.
15	Capacity
15-01	Provided the State maintains adequate hardware resources as recommended by Contractor in writing, the system can be configured to support the concurrent number of DHS employees as of the effective date of this Contract (Approximately 9,000).
16	System Auditing
16-01	The system has the ability to maintain a historical record of changes made within the system (e.g., data element, business rule, process control, software program), the ID of the person or process that made the change, the before images of the affected data records, and the date and time the change was made.
16-02	Through the use of third party reporting, (i) the system offers the ability to query, view, filter, and sort the system audit trail, and (ii) the system is able to store the queries.
17	Error Handling
17-01	The system writes errors to an error log.
17-02	The system writes errors to text logs, which an administrator can view.



	Technical Requirements
17-03	The system outputs errors to a log file.
18	<i>Additional Requirements</i>
18-01	Internet browser-based system compatible with Internet Explorer 6.0
18-02	The system uses an Oracle 10g database and operates under Microsoft Operating Systems.
18-03	Email functions must be compatible with GroupWise 7 if using a standard SMTP protocol, provided that the software only utilizes the SMTP basic mail functions, and none of the other GroupWise 7 features.



Appendix C
Infrastructure Requirements

Contractor has provided detailed specifications for all equipment required for the proposed solution.

	SumTotal Response
	<p>RECOMMENDED HARDWARE CONFIGURATIONS PATHLORE LMS 6.6 SP1</p> <p>Introduction The Pathlore Learning Management System in most installations is a data intensive application and not usually a processor or I/O intensive application. The below base memory requirements reflect this. It is always recommended to review the following requirements:</p> <ul style="list-style-type: none"> • Suggested Requirements for Microsoft Windows Server (which includes Microsoft IIS) for the Web/Presentation and Business Rules Tier • Suggested Requirements for Microsoft SQL Server or Oracle for database tier. • Storage and Bandwidth recommendations from chosen courseware vendors. <p>Client Workstation Hardware Requirements</p> <p>Assumptions:</p> <ul style="list-style-type: none"> • Up to 5000 learners • Moderate courseware delivery • Moderate average daily classroom enrollments <p>Training (a.k.a. System) Administrator Workstation(s)</p> <ul style="list-style-type: none"> • Intel® Pentium 4® or Intel® Celeron processor • 512 MB memory • 1024x768 screen resolution • 50 MB of free space on hard drive • Microsoft® Windows® XP or Windows 2000® • Microsoft Internet Explorer 6.0 • Network connectivity • CD-ROM drive <p>Five Servers for Maximum Throughput, Reliability and Load Balanced Course Delivery</p> <p>Assumptions:</p> <ul style="list-style-type: none"> • Up to 75000 learners



- Moderate-Heavy courseware delivery
 - Moderate-Heavy average daily classroom enrollments
- Two of the following for Presentation/Content Delivery Tier:
- Intel® Pentium® 4 processor
 - 4GB Total SDRAM
 - 40GB Hard Drive (for OS and LMS Enterprise only)
 - 500GB Hard Drive for Content (individual needs will vary based on number and size of courses)
 - CD-ROM Drive
 - 100BaseT Ethernet Card (depends on organizational network standards)
 - Replication/Load Balancing Software or Hardware (example: Windows 2000 Advanced Server)
- One of the following for Business Rules Tier:
- Intel® 700Mhz Pentium® 4 processor (or equivalent)
 - 4GB Total SDRAM
 - 120GB Hard Drive (for OS and LMS Enterprise only)
 - CD-ROM Drive
 - 100BaseT Ethernet Card (depends on organizational network standards)
 - Replication/Load Balancing Software or Hardware (example: Windows 2000 Advanced Server)
- Two of the following for Database Tier:
- Intel® 700Mhz Pentium® III processor (or equivalent)
 - 4GB Total SDRAM
 - Raid Controller
 - 3 - 40MB Hard Drives (for OS and RDBMS Software)
 - CD-ROM Drive
 - 100BaseT Ethernet Card (depends on organizational network standards)
 - Database Clustering Support Enabled between both machines (example: Microsoft SQL Server 2000 Enterprise Edition)

Ancillary Hardware

Pathlore Mail Server

(Note: The Pathlore Mail Server can be implemented on a standalone workstation class machine.)



- Intel® Pentium® Class processor (or equivalent)
- 128MB Total SDRAM
- 20GB Hard Drive (for OS and LMS Enterprise only)
- CD-ROM Drive
- 100BaseT Ethernet Card (depends on organizational network standards)

Pathlore Phone Self Service

(Note: The Pathlore Phone Self Service can be implemented on a standalone workstation class machine.)

- Intel® Pentium® Class processor (or equivalent)
- 128MB Total SDRAM
- 20GB Hard Drive (for OS and LMS Enterprise only)
- 1 available PCI slot per Dialogic Voice Board
- 3 Dialogic Voice Boards each with 4 line capacity
- CD-ROM Drive
- 100BaseT Ethernet Card (depends on organizational network standards)

SYSTEM REQUIREMENTS FOR PATHLORE LMS 6.6 SP1

Pathlore's support of the platforms in the System Requirements that follow is contingent on the manufacturer's continued support of the platform. If the manufacturer discontinues support of a platform, Pathlore automatically discontinues support of it.

Student Workstation (Presentation Layer)

- Microsoft Internet Explorer 5.5 through 7
- Netscape Navigator 6.2
- Netscape 7.2 (Mozilla)
- Firefox 1.0 and 2.0

Administrative Workstation (Presentation Layer)

- 1024 x 768 resolution minimum
- Microsoft Internet Explorer 6 through 7
- Adobe Acrobat PDF Reader

Business Rules Layer

- Windows 2000 Server or Windows 2003 Server (Standard, 32-bit Enterprise, 32-bit Datacenter)
- Microsoft .NET Common Language Runtime (CLR) included with LMS



- Microsoft .NET Framework, version 2.0 *included with LMS*

Web Services Interface Layer

- Windows 2000 Server or Windows 2003 Server with IIS enabled (Standard, 32-bit Enterprise, 32-bit Datacenter)
- Microsoft .NET Common Language Runtime (CLR) included with LMS
- Microsoft .NET Framework, version 2.0 *included with LMS*

Database Layer

- MSDE 2.0 on Windows
- Oracle 9.2, 10.1.0.3, and 10.2.0.3 (10g)
- MS SQL Server 2000
- MS SQL Server 2005

ODBC Driver Requirements**Oracle 9.2**

- Version 9.2.0.1.0
- Version 9.2.0.4.0
- Version 9.2.0.5.4
- Version 9.2.0.6.0

Oracle 10.0

- Version 10.1.0.3 (this version can be found on Oracle's Metalink site)
- Version 10.1.0.3.1
- Version 10.1.0.5.0
- Version 10.2.0.1.0
- Version 10.2.0.2.0
- Version 10.2.0.3.0

Tested But Not Supported (failed testing)

- Version 9.0.1.4.0 (Oracle Bug)
- Version 9.0.1.5.0 (Oracle Bug)
- Version 9.2.0.2 (Oracle Bug)
- Version 9.2.0.3.0 (Oracle Bug)
- Version 9.2.0.5.0 (Oracle Bug)



- Version 9.2.0.6.3 (Oracle Bug)
- Version 9.2.0.6.4 (Oracle Bug)
- Version 9.2.0.6.5 (Oracle Bug)
- Version 10.1.0.4.0

MS SQL Server

- MS SQL Server ODBC version 3.7x or later

Skills Dictionary

- ITG Competency Models as listed below:
- Enterprise Model Release 8.6
- General Corporate Functions Job-Skills Model Release 6.0
- Information Technology Job-Skills Model Release 8.3
- Insurance Model Release 3.0
- Banking & Financial Services Competency Model Release 1.0
- Healthcare Enterprise Competency Model Release 4.0

Report Writer

- Pathlore LMS standard reports designed in Crystal Decisions (Reports 9.0, 10.0 and 11.0)
- Pathlore LMS standard reports designed for use with Microsoft Reporting Services (2000 and 2005)

Character Set

- Single byte unidirectional character sets
- English is default

Technology Partners

- Centra 7.1, 7.2, and 7.5
- InterWise ECP iClass 5.2
- InterWise iMeeting 5.2
- Microsoft Live Meeting 2003
- NETg Learning Studio 3.0.3
- NETg Simbuilder 2001
- NETg Skillbuilder DX/Web Player 2.0.38
- SkillSoft Business Skills Player (BSP) 4.0.5.25



- SkillSoft Course Player (SCP) 5.0.7.72
- SkillSoft Skillsimulation (SkillSim) Player 2.1.24
- SkillSoft e3 Player 4.3SR2
- SkillSoft Classic Player 2.5.
- Vivid
- WebEx Training Center WBS20, WBS23, and WBS25 (including SSL)

Elearning Standards

- ADL SCORM 1.2 RTE-3 (test suite 1.2.7)
- ADL SCORM 2004 CAM and RTE 1.3
- AICC AGR-010 (CMI001 Version 4.0)
 - The following requirements may be optional for some implementations based on product feature set configuration. See product User Manuals for specific functionality uses listed below.

Email Notifications

- SMTP mail service

Gap Analysis

- Windows 2000 Server or 2003 Server (Standard, 32-bit Enterprise, 32-bit Datacenter) for Batch Reporter functionality (to submit GA reports).
- Microsoft .NET Framework, version 1.1 *included with LMS*

Mail Server (application)

- Windows 2000, XP or Windows 2003 Server (Standard, 32-bit Enterprise, 32-bit Datacenter).
- Microsoft .NET Framework, version 1.1

Microsoft Exchange Calendar Integration

- Exchange 2003
- Outlook 2000 or later

Microsoft Word-based Mail

- Microsoft Word 2000 (9), XP (10), or 2003 (11), for letters/notifications functionality
- Windows 2000, XP or Windows 2003 Server (Standard, 32-bit Enterprise, 32-bit Datacenter) with Microsoft .NET Framework, version 1.1 *included with LMS CD*

Windows-based Utilities (Windows 2000, 2003 Server or XP)

- Database Utility



- Skills Dictionary Import Utility
- Integration Manager
- TGA Maintenance Utility
- TGA Report Import Utility
- Concurrency Monitor
- Create WORD Letters Utility
- Calendar Import Utility
- Database Transfer Manager

Phone Self-Service

- Windows 2003 Server, 2000 or XP



Appendix D
Description of Solution and Customer Maintenance

As used herein, “we” or “us” shall mean SumTotal Systems, Inc. (successor-in-interest to Pathlore Software Corporation), a Delaware corporation (“we” or “us”) with an address for purposes of this Contract at 1808 North Shoreline Boulevard, Mountain View, CA 94043; and “you” shall mean Michigan Dept. of Human Services with an address for purposes of this Contract at 235 South Grand Ave., Lansing, MI 48933.

You previously licensed SumTotal’s Pathlore Registrar software pursuant to the agreement provided by us with such Registrar software (“Registrar Agreement”). You wish to upgrade from the Registrar software to SumTotal’s Pathlore LMS Enterprise software as set forth herein.

This Contract replaces and supersedes the Registrar Agreement. All Statements of Work and agreements executed by the parties pursuant to the Registrar Agreement shall remain in full force and effect and be governed by this Contract. In the event of any inconsistency between this Contract and the Registrar Agreement or any Statement of Work executed hereunder, the terms of this Contract shall control.

I. DESCRIPTION OF SOLUTION

We will provide you with the following solution pursuant to the Terms and Conditions of the Contract:

A. <u>Initial License Configuration</u>	
A.(1) <u>Software Components</u> :	<ul style="list-style-type: none"> • SumTotal Pathlore LMS Enterprise 6.6 • Phone Self Service
A.(2) Number of Named Users for the Pathlore LMS Enterprise Software:	9,000

B. <u>Software License Fees</u>:	
Pathlore LMS Enterprise Software License Fees	\$129,493 (includes a one-time product credit of \$19,650 for W1,100,623)
Pathlore Self Service	\$30,030
Total Software License Fees:	\$159,523

C. <u>Maintenance Services for Software</u>:	
Type of Maintenance Services:	Standard
Number of Designated Contacts:	4
Annual Fee for each additional Designated Contact above four (4)	\$1,500.00
Initial Maintenance Term:	Effective Date through one year from the Effective Date
Initial Maintenance Term Fee for the Pathlore LMS Enterprise Software:	\$25,905.60
Initial Maintenance Term Fee for the	\$6,013.18



Pathlore Self Service Software:	
Total Initial Maintenance Term Fee	\$31,918.78

<p>D. <u>Billing Information:</u></p> <p>MICHIGAN DEPT OF INFORMATION TECHNOLOGY PROCUREMENT - 1ST FLOOR, NORTH TOWER CONSTITUTION HALL 525 W. ALLEGAN LANSING MI ZIP: 48913 Attn: SHARON CARTER Phone: 517 335-4038</p>	<p><u>Shipping Information:</u></p> <p>MDHS Office of Training and Staff Development 7109 West Saginaw Highway Lansing, MI 48917 Attn: Dawn Callahan Tel No. 517517-335-6234 e-mail: callahand@michigan.gov</p>
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Languages: The interface and data (excluding data entered by the Named User) presented to the Named User during operation of the Software under the Initial License Configuration is localized in U.S. English.

II. CUSTOMER MAINTENANCE

This Exhibit sets forth the additional terms and conditions under which we will provide customer maintenance services in connection with the Software licensed to you pursuant to this Contract.

Customer Maintenance Contact Information:

SumTotal Systems Maintenance Web Site: **www.sumtotalsystems.com/support** (Note: Follow the instructions for submitting a technical issue or question to SumTotal Systems.)

Telephone Maintenance Numbers: **877-TOTALCS or 877-868-2527 or 425-637-1673**

The contact information above is current as of the date of this Contract. We reserve the right to change our contact information from time to time upon notice to the Designated Contacts.

C1. Additional Definitions.

(a) “Designated Contacts” means the individuals designated by you and agreed to by us who are authorized to contact our customer maintenance staff and who will coordinate all of your Error submissions and maintenance requests.

(b) “Error” shall mean a reproducible defect in the Software when operated on a Supported Environment, which causes the Software not to operate substantially in accordance with our published documentation.

(c) “Error Correction” means a modification or patch that brings the Software into substantial conformance with our published documentation, or a procedure, routine or other information that enables you to avoid the practical adverse effect of an Error.

(d) “Instance” means one or more SumTotal web application servers.

(e) “Maintenance Release” means an update to an existing version of the Software containing Error Corrections or minor



functionality enhancements. A Maintenance Release is designated as a numbered service pack for the current version, with no change in the version number.

(f) "New Version Release" means a new version of the Software containing new features or enhancements to functionality. A New Version Release is designated by an increase in the version number. e.g. from 2.5 to 2.6 or 3.0. "New Version Release" only includes releases of the Software in a language described above.

(g) "Primary Instance" means an Instance in your production environment containing your live training records.

(h) "Secondary Instance" means an Instance in your testing environment used for testing or staging of your data.

(i) "Supported Environment" means a hardware, operating system and database platform meeting the minimum system configuration requirements for the proper use and operation of the Software as set forth in our published documentation.

(j) "Maintenance Term" means any period during which you are entitled to receive maintenance hereunder, including any renewals or extensions thereof.

C2. Maintenance Services.

(a) Standard Maintenance Provided. During each Maintenance Term, we will provide the following maintenance, subject to the procedures and limitations described herein: (i) clarifying and assisting in the operation of the features and functions of the Software; (ii) clarifying our published documentation; (iii) assisting in identifying and verifying the causes of suspected Errors; and (iv) providing Error Corrections. Such maintenance will be provided for the Primary Instance and Secondary Instance. During each Maintenance Term, you will have access to our online Customer Productivity Center ("CPC") located at www.sumtotalsystems.com. The CPC provides you with access to online learning, knowledge documentation, and tools that enable you to enhance your knowledge of the Software.

(b) Self Help Maintenance Resources. You agree that the users of the Software will first attempt to answer any questions or resolve any issues with respect to the operation of the Software by using the following self help resources: (i) the Help function of the Software and (ii) our customer maintenance web site.

(c) Contacting Customer Maintenance. If you are unable to resolve an issue or question with respect to the Software using the self help resources described above, the Designated Contacts may contact a customer maintenance representative to receive maintenance using one of the methods described below. We will provide maintenance only in English and only to the Designated Contacts. Any communication between the Designated Contacts and a customer maintenance representative must be in English. We will not provide maintenance to end users of the Software or to any person other than the Designated Contacts.

(i) Telephone Hot Line. We will provide telephone maintenance to the Designated Contacts between the hours of 8:00 a.m. to 8:00 p.m. Eastern Time Monday through Friday, excluding SumTotal Systems holidays (the "Maintenance Hours"). We will provide you with a list of SumTotal Systems holidays and any reduced maintenance hours on those holidays upon request. If you have purchased optional Extended Maintenance, we will provide additional telephone maintenance outside the Maintenance Hours 24 hours per day during weekdays for all severity level Errors and 24 hours per day, seven days per week, including SumTotal Systems holidays ("Extended Maintenance Hours") for Severity 1 Errors, as set forth in Table C1.

(ii) Web Email Template. We will use commercially reasonable efforts to provide an acknowledgement to web email sent to "<http://www.sumtotalsystems.com/support>" within eight (8) business hours after we receive the email.

(d) Error Correction. When you report an Error to us you should include a detailed description of the Error and the severity level determined in accordance with Section C2(e) below. When we receive notice of an



Error, we will assign a problem tracking number to be included in all correspondence between you and us related to the Error and after our e-mail acknowledgement described in Section C2(c)(ii) we will provide a response in accordance with the severity levels and response times identified in Section C2(e). Thereafter, we will use commercially reasonable efforts to provide an Error Correction. The Error Correction may require that you install the latest Maintenance Release for the supported version of the Software on which you reported the Error. An Error Correction may require multiple contacts and off-line research. The Error Correction, when completed, may be provided in the form of a Software patch consisting of sufficient programming and operating instructions to implement the Error Correction, which will be provided to you via email, download or other electronic means.

(e) Response Times. Our response to an Error depends on the severity of the Error and the level of maintenance purchased by you, as determined by Table C1. For each level of severity, our customer maintenance representatives will use commercially reasonable efforts to respond, during the Maintenance Hours, within the times set forth in Table C1. Response time is the time from our receipt of notice of the Error until we contact the Designated Contact reporting the Error to begin resolution efforts, not the time to deliver an Error Correction. We will respond to an Error which arises in the Primary Instance at all severity levels set forth in Table C1. If an Error arises in the Secondary Instance, we will only respond according to the Severity 3 level response time, as set forth in Table C1.

(f) Additional Services with Premier Maintenance for the Primary Instance and Secondary Instance. If you have purchased Premier Maintenance, we will provide you with the following additional services for the Primary Instance and Secondary Instance: (i) a technical account manager responsible for proactively managing your maintenance issues during the Maintenance Hours; (ii) an annual one-day visit by the technical account manager to your location on a mutually-agreed date (travel and expenses not included); (iii) monthly usage reports detailing maintenance activity; (iv) review of relevant error corrections delivered to our

customer base; and (v) accelerated response times.

(g) Exclusions from Maintenance Program. We are not responsible or liable for causes external to the Software, including but not limited to: (i) your failure to incorporate Maintenance Releases or New Version Releases; (ii) installation of the Software or any New Version Releases not in accordance with the documentation provided with the Software or New Version Releases; (iii) your use of the Software with any software or hardware other than the Supported Environment; (iv) problems resulting from use of the Software in a manner not permitted pursuant to your license; (v) modifications, alterations, or additions to the Software by parties other than us (including without limitation, modifications, alterations, or additions to the Software made by you); or (vi) damage from any source other than us including but not limited to water, humidity, fire, power surges, computer viruses, and accidents ("Excluded Services"). Any maintenance or services required to fix the Excluded Services will be billed to you on a time-and-materials basis in accordance with our then current rates. Such services shall be set forth on a mutually agreed upon Statement of Work and provided to you pursuant to this Contract. Unless we are hosting the Software at our data center, this maintenance program does not include maintenance in connection with or correcting Errors arising out of or related to a database management server or a web server or any other third party component that is used in conjunction with the Software. We may, but are not required to, provide Error Corrections for such Errors at our then current time and materials rates. Maintenance does not include Software installation, configuration or services provided on-site at your location. If we are required or requested to travel to your facilities, any services will be provided at then current time and materials rates and you will reimburse us for all reasonable travel expenses, including meals and lodging. Maintenance does not include problems or errors in modifications to the Software we provide as a Service Deliverables pursuant to this Contract. Service Deliverables are provided with a warranty as set forth in this Contract. We are not responsible for restoring lost data or damage to your data base that result from your actions. If you desire to purchase upgrade services or other professional services



from us outside the scope of the maintenance in this this Contract, then we will provide such professional services to you for a charge as set forth in a mutually agreed Statement of Work pursuant to this Contract.

C3. Your Responsibilities.

(a) Supported Environment and Operations. You are responsible for undertaking the proper supervision, control and management of your use of the Software including, but not limited to: (i) providing, maintaining and assuring proper configuration of the Supported Environment; (ii) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction; and (iii) maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs. This Section will not apply to you if we are hosting the Software at our data center.

(b) Assistance in Providing Maintenance. You will provide reasonable assistance to us in determining and resolving Errors you report. Error determination activities may include performing network traces, capturing error messages, collecting configuration information and other similar activities to allow us to reproduce the Error. Resolution activities may include access to your personnel and/or remote access to the Supported Environment. You agree to allow us to use remote access tools, with the participation and under the supervision of a Designated Contact, to access the Software in the Supported Environment and modify its configuration as part of our Error determination and resolution activities. We may not be able to provide you with an Error Correction without such remote access. You are responsible for performing activities to implement Error Corrections we provide and for responding in a timely manner to requests for information by our customer maintenance staff. Error Corrections may include changing, installing or reinstalling new or existing versions of web browser software or new components, or modifying processes. Any information you provide us in connection with the maintenance process that you designate as confidential will be used only to resolve reported Errors, will not be disclosed to anyone other than our personnel involved in

resolving the Error. As part of our Error resolution process, information you provide to us may be made available to our employees in foreign countries, unless you notify us otherwise in writing when providing us with such information.

(c) Designation of Maintenance Contacts. You will designate up to the number of individuals specified in this Contract as the Designated Contacts for receiving maintenance hereunder and notify customer maintenance of the Designated Contacts. You may change the Designated Contacts by notifying customer maintenance, but may not have more than the number of Designated Contacts set forth above at any one time. Each Designated Contact may not be changed more than once in a 30-day period.

(d) Training. You are responsible for proper training of the Designated Contacts and all other appropriate personnel in the operation and use of the Software and the Supported Environment.

C4. New Releases of the Software.

(a) Maintenance Releases Provided with Maintenance Services. If and when available, we will provide to you any Maintenance Releases and New Version Releases that we make generally available to customers who have purchased maintenance during the Maintenance Term at no additional charge. Any Maintenance Release or New Version Releases are part of the Software and subject to the terms and conditions of this Contract. The designation of a Software release as a Maintenance Release or a New Version Release will be made by us in our reasonable discretion.

(b) Maintenance of Prior Releases. We will provide maintenance as described herein for the most current Maintenance Releases made with respect to the current New Version Release and the last two New Version Releases immediately preceding that release.

(c) Installation and Configuration of New Releases. Maintenance does not include the installation or configuration of any Maintenance Releases or New Version Releases. Any services to be provided in



connection with the installation or configuration of Maintenance Releases or New Version Releases will be provided for a mutually agreed fee as a Service Deliverables pursuant to this Contract. New Version Releases may have significant changes from current versions and it is strongly recommended that we provide the services to install New Version Releases to ensure our ability to continue to provide maintenance and Error Corrections. We will not correct Errors arising out of or related to installation or configuration of the Software or any New Version Releases by any party other than SumTotal Systems.

(d) Migration of Customizations and/or Modifications. If you have customized and/or modified Software, maintenance does not include migrating your customizations and/or modifications to any Maintenance Release or New Version Release, unless otherwise provided under the Statement of Work pursuant to which we provided such customizations and/or modifications. Any services to be provided in connection with the migration of customizations and/or modifications to Maintenance Releases or New Version Releases will be provided for a mutually agreed fee as a Service Deliverables pursuant to this Contract.

C5. Source Code Escrow.

(a) Source Code Option. We will maintain the source code of the supported versions of the Software (determined in accordance with Section C4(b)) in an escrow account with Iron Mountain ("Iron Mountain") having the release conditions described below (the "Escrow Account"). You may elect, at your expense, to be added as an additional beneficiary of the Escrow Account at any time during the Maintenance Term by providing us written notice of your election of this option. If you elect to be added as a beneficiary of the Escrow Account, you will be invoiced directly by Iron Mountain for the fees to add and maintain you as a beneficiary. We reserve the right to use a reputable third-party commercial escrow agent other than Iron Mountain, provided that the release conditions are as set forth in this Contract.

(b) Release Conditions. If you elect the source code escrow option, you will be

permitted to access and use the source code to maintain the Software components and versions licensed by you if any one of the following events occurs and remains uncorrected for more than 30 days during a Maintenance Term: (i) we have been adjudged to be bankrupt by a court of competent jurisdiction and there has been an entry of an order for relief under Title 11 of the United States Code; (ii) we have made a general assignment for the benefit of creditors; (iii) a general receiver or trustee in bankruptcy has been appointed for our business or property; or (iv) we take action under any state insolvency or similar law for the purpose of our bankruptcy, reorganization, or liquidation.

(c) Right to Use Following Release. If the source code is released to you, you may only use the source code for the sole purpose of supporting and maintaining the Software licensed to you in accordance with this Contract. You are obligated to maintain the confidentiality of the released source code and any materials which may accompany it.

C6. Maintenance Fees.

Annual maintenance fees for any Maintenance Term are based on the then current Software you license and your then current number of licensed Named Users. You will be invoiced for the maintenance fees for the initial Maintenance Term upon execution of this Contract and, subject to Section C7, for any renewal Support Term upon expiration of the then current Maintenance Term. Fees for additional services not included in maintenance or expenses incurred will be invoiced monthly at the end of the month in which such services are provided or expenses incurred.

C7. Term, Renewal and Termination.

(a) Initial Maintenance Term and Renewal. The initial Maintenance Term shall begin on the Effective Date and shall run for an initial Maintenance Term as set forth at the beginning of this Contract. Upon expiration of the then current Maintenance Term, a new Maintenance Term shall automatically begin for a consecutive 12-month period; provided that (i) you have not given us written notice that you do not wish to extend the Maintenance Term for an additional 12 months at least 30 days prior to the



end of the current term; (ii) you pay the then current maintenance fee for the additional 12-month Maintenance Term for the Standard Maintenance option and any optional services we are then providing; and (iii) we still offer maintenance for the Software. If you have purchased the Premier or Extended Maintenance option, then you will pay the prior 12-month Maintenance Term fee plus the Consumer Price Index. We will provide you with written notice of the upcoming expiration date, which shall include notice of any price increase for the upcoming Maintenance Term, if applicable. The failure to renew maintenance shall not affect your licenses to the Software.

(b) Termination of Maintenance.

Either party may terminate the maintenance of the Software upon 30 days written notice to the other party of a material breach by the other party of its obligations set forth in this this Contract, if the breach is not cured within that 30-day period. If we terminate maintenance as a result of your uncured breach, we will retain all maintenance fees paid. Material breach is a failure to pay. If you terminate maintenance as a result of our uncured breach, our sole and exclusive obligation will be to promptly refund that portion of the maintenance fee actually paid by you that is proportional to the percentage of the Maintenance Term remaining at the time termination is effective. The termination of maintenance shall not affect your licenses to the Software.

(c) Reinstatement of Maintenance Services. If you have terminated or elected not to renew maintenance, you can elect to reinstate maintenance if we still offer maintenance for the Software and if you pay a fee equal to (i) the maintenance fees for the period when you did not receive maintenance and (ii) the maintenance fee for the current Maintenance Term.



**Table C1
Response Times**

Severity Level	Severity Level Description	Response Time Targets		
		Standard	Extended	Premier
Severity 1	All or most of the Software is inaccessible or unresponsive, e.g. the system has crashed and will not recover.	Time to respond is 1 hour, during Support Hours.	Time to respond is 1 hour.	Time to respond is 1 hour, during Support Hours.
Severity 2	A major feature of the Software is not functional, resulting in a critical impact to a majority of the user community. There is not an available workaround.	Time to respond is 4 hours during Support Hours.	Time to respond is 4 hours during Support Hours.	Time to respond is 1 hour during Support Hours.
Severity 3	Incorrect behavior of the Software, cosmetic problem, any usage question, or functionality not available but there is either an available workaround or the impact has an effect on a minority of the user community.	Time to respond is 1 business day during Support Hours.	Time to respond is 1 business day during Extended Support Hours.	Time to respond is 1 hour during Support Hours.



Appendix E
Cost Tables

Table 1: Summary of the Project Cost

Project Cost(s)	Cost (\$)	Comments
Business Requirements Breakdown in Table 2	\$113,620	Project Management, Product Specialist and Project Consulting in the Statement of Work (Appendix A) will be considered to validate Business Requirements.
Recommended Equipment Breakdown in Table 3	<u>Not Included</u>	Please see Table 3 for more information.
Software (includes COTS and any third party software) Breakdown in Table 4	\$159,523	Please see Appendix D Description of Solution and Customer Maintenance.
Design, Development, Implementation (New Application or Customization of COTS Data conversion, data migration, interfaces/integration, testing) Breakdown in Table 5	\$66,240	The Implementation Consulting and Phone Self Services in the Statement of Work (Appendix A) will be considered to be for Design, Development, and Implementation.
Training and Documentation Breakdown in Table 6	\$51,520	Train the Trainer Consulting, Training Administration Fundamentals, System Management Training. Please see the Statement of Work (Appendix A) for more details.
Software Maintenance and Support (Base Years Costs Only) Breakdown in Table 7	\$173,324.86	This is for the base 5 years, not to include years 6 and 7.
Optional Bank of Hours Cost Breakdown in Table 8	\$131,437	SumTotal can support additional services as long as you are current in maintenance with us. The actual budgetary figure for services will vary based on the type of consulting and assistance you may require. For budgetary forecasting we'd recommend using a budget of approximately \$131,437.
Other Costs Provide all additional costs that are not identified in tables 1-8.	N/A	N/A
Total Project Cost	\$695,664.86	



Table 2: Business Requirements

Category	Resources Required (Contractor to identify IT classification)	Total # of hours (Contractor to identify # of hours per resource)	Total cost (\$) (Contractor must transfer category totals to Table 1)	Comments (Contractor must provide a narrative to explain how they arrived at the costs identified)
Business Requirements <i>(facilitated sessions, validation and verification of requirements)</i>	Our Project Managers, Product Specialists will mainly be responsible for the sessions, and validation of business requirements.		\$113,620	Project Management, Product Specialist and Project Consulting in the Statement of Work (Appendix A) will be considered to validate Business Requirements. This roles are clearly defined in the SOW.
Total Cost			\$113,620	

Table 3: Recommended Equipment

The State is responsible for acquiring its own hardware. If The State requires hardware through this contract, a price will be obtained through the change control process.

Table 4: Breakdown of Software Licenses – including COTS and all Third Party Software Costs and Software Documentation

Software license(s)	Product Name and Version	QTY (Number of Licenses)	License Type (ie: Enterprise, server, or per user)	Total Cost (\$)	Comments (Description of licensing)
Software Deliverables					
Bidders to list all software that is required for the proposed solution	Pathlore LMS Enterprise 6.6	9,000	Per named user.	\$129,493	This includes a one-time discount of \$19,650 for the current Registrar product.
	Phone Self Service	9,000	Flat Fee per Enterprise.	\$30,030	Flat fee.
Documentation Deliverables					
Installation Procedure Documentation	N/A	N/A	N/A	N/A	User documentation included.
End User Manual (Electronic)	N/A	N/A	N/A	N/A	User documentation included.



Technical Manual (Electronic)	N/A	N/A	N/A	N/A	User documentation included.
Data Element Dictionary (Electronic)	N/A	N/A	N/A	N/A	User documentation included.
Other (List):	N/A	N/A	N/A	N/A	User documentation included.
Total Cost				\$159,523	

Table 5: New Application or Customization of COTS - Design, Development and Implementation Costs

Category	Resources Required (Contractor to identify IT classification)	Total # of hours (Contractor to identify # of hours per resource)	Total cost (\$) (Contractor must transfer category totals to Table 1)	Comments (Contractor must provide a narrative to explain how they arrived at the costs identified)
Design and Development of the Solution to Meet RFP Requirements	Implementation Consultants will primarily be responsible, along with our Project Managers.	304 hours: 254 of IC 50 of PM and IC combination.	\$66,240	The Implementation Consulting, Project Management and Phone Self Services in the Statement of Work (Attachment A) will be considered to be for Design, Development, and Implementation.
<u>Implementation Activities (see below):</u>				
Data Conversion			\$20,240	
Integration			\$31,280	
Testing			\$14,720	
Total Cost			\$66,240	

**Table 6: Breakdown of Training and Documentation Cost**

Training cost and Documentation	Cost (\$)	Comments
Train the Trainer Session(s)	\$12,880	This will be completed by a unique Product Specialist for the system.
Train the Trainer Documentation (25)	N/A	No documentation is provided for these types of sessions.
Technical Training Session(s)	\$19,320	Onsite Classroom Training.
Technical Training Documentation (5)	No Charge.	Manuals are included.
System Administration Training Session(s)	\$19,320	Onsite Classroom Training.
System Administration Training Documentation (10)	No Charge.	Manuals are included.
Other (List):	N/A	
Total Cost	\$51,520	Contractor will work with the State to adjust or customize this plan as needed/required.

Table 7: Software Maintenance and Support

Cost Categories	Maintenance Costs & Help Desk Support (8AM-5PM EST Mon-Friday)	Maintenance Costs & Help Desk Support (7AM-7PM EST Mon-Friday) (OPTIONAL)	Comments
Software Maintenance and Help Desk Support			The State requires the license cost to be a one time fee.
First Year	\$31,918.78	N/A	Standard Pathlore support hours are 8 AM to 8 PM EST.
Second Year	\$32,876.34		
Third Year	\$33,862.63		
Fourth Year	\$35,555.77		
Fifth Year	\$39,111.34		
Total Cost (Base Years)	\$173,324.86	N/A	
Sixth Year (Option Year)	\$49,720.11		Do not include the optional year costs in Table 1 (Summary Cost Table)
Seventh Year (Option Year)	\$51,211.71		
Total Cost (Option Years)	\$100,931.82		

**Table 8: Optional Bank of Hours Cost**

Staffing Category	Firm Fixed Hourly Rate	Est. Hrs (5 year total)	Extended Price
Project Manager	\$239.46	200	\$47,892
Technical Lead	\$239.46	200	\$47,892
Product Specialist	\$356.53	100 (arbitrary number, may be negotiated)	\$35,653
Reserved Bank of Hours Estimated Cost		500	\$131,437

NARRATIVE:

Contractor can support additional services as long as the State is current in maintenance with the Contractor. The actual budgetary figure for services will vary based on the type of consulting and assistance the State requires. Rates above are fully loaded to include travel and expenses.

Notes:

4. Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. "Estimated Hours" and "Extended Price" are non-binding.
5. The State intends to establish funding for up to **500 hours** over the five year life of the application for development. Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.
6. The Contractor will utilize the fully loaded hourly rates to arrive at a firm fixed price for responses to separate statements of work for additional training and enhancements.